(24,688)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET, PLAINTIFF IN ERROR,

vs.

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 (*Præcipe.*)

Supreme Court of Louisiana.

No. 20784.

FERNAND V. GASQUET, Plaintiff in Error,
vs.
GEORGE F. LAPEYRE and J. MARTIAL LAPEYRE, Defendants in Error.

In re Interdiction of FERNAND VAUGHAN GASQUET.

To Paul E. Mortimer, Clerk of Supreme Court of Louisiana:

In the preparation of the transcript in the above entitled matter to be transmitted to the Supreme Court of the United States, you are instructed to include therein only the following named papers:

1. Petition.
2. Exceptions.
3. Supplemental Petition.
4. Answer.
5. Judgment Civil District Court.
6. Motion and bond and order of Appeal.
7. Transcript of proceedings in Court of Appeal- on Habeas Corpus.
8. Plea of Res Adjudicata.
9. Opinion and decree of Supreme Court.
10. Application for Rehearing.
11. Transcript of Proceedings in Probate Court of Shelby County, State of Tennessee, complete as filed.
12. Plea to abate or remand case.
13. Order refusing to abate or remand.
14. Order refusing rehearing.
15. All Minute Entries of proceedings in Supreme Court.
16. Application for Writ of Error.
17. Assignment of Errors.
18. Order for Writ of Error.
19. Bond for Writ of Error.
20. Writ of Error.
21. Citations of Writ of Error.
22. Sheriff's Return on Citations.

(Signed) J. C. & THOS. GILMORE,
WM. WINANS WALL,
Att'ys for Pl'ff in Error, Attorneys for Fernand Vaughan Gasquet, Appellant and Plaintiff in Error.

Acknowledgment of Service.

The undersigned, Attorney for George F. Lapeyre and J. Martial Lapeyre, Appellees, Defendants in Error, acknowledge service of the above præcipe.

(Signed) DENEGRE, LEOVY & CHAFFE.

New Orleans, La., April 5th, 1915.

(Endorsed:) No. 20,784. Supreme Court of Louisiana. F. V. Gasquet, Pl'ff-in-error vs. G. F. Lapeyre and J. M. Lapeyre, Def't-in-error. Præcipe of record. Filed Apl. 9, 1915. (Sg.) Paul E. Mortimer, Clerk.

2 (*Petition Filed in the Civil District Court.*)

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Civil District Court, Division "E."

No. 106,635.

Interdiction of FERNAND V. GASQUET.

Petition for Interdiction and Affidavit.

Filed November 13, 1913.

To the Honorable, the Judges of the Civil District Court in and for the Parish of Orleans:

The petition of Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner, of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, authorized by their said husbands, and of George F. Lapeyre and J. Martial Lapeyre, all of whom reside in the City of New Orleans,

With respect represents:

That your petitioners Mrs. Eveline Gasquet Fenner and Mrs. Martha Gasquet Westfeldt are the sisters, and your petitioners George F. Lapeyre and J. Martial Lapeyre are the maternal uncles of Fernand Vaughan Gasquet, who resides and is domiciled in the City of New Orleans.

That, owing to the infirmities, the said Fernand Vaughan Gasquet is incapable of taking care of his person or administering
3 his property and that it is therefore advisable and necessary that he be interdicted in accordance with law.

Wherefore petitioners pray that the said Fernand Vaughan Gas-

quet be cited to appear and answer this petition, and that after due proceedings had there be judgment pronouncing his interdiction.

And petitioners pray for all general and equitable relief in the premises.

(Signed) EVELINE GASQUET FENNER.
" MARTHA GASQUET WESTFELDT.
" J. M. LAPEYRE.
" GEORGE F. LAPEYRE.
" DENEGRE, LEOVY, & CHAFFE,
Att'ys for Petitioners.

We authorize our wives,

(Signed) GEORGE G. WESTFELDT.
" CHAS. PAYNE FENNER.

Mrs. Eveline Gasquet Fenner and Mrs. Martha Gasquet Westfeldt being duly sworn, say- that all the allegations of fact made in the foregoing petition are true except *as* those allegations expressly made on information and belief, and that as to those affiants believe them to be true.

(Signed) EVELINE GASQUET FENNER.
" MARTHA GASQUET WESTFELDT.

Sworn to and subscribed before me at New Orleans, Louisiana, on this the 12th day of November, A. D., 1913.

(Signed) FELIX J. PUIG,
[SEAL.] *Not. Pub.*

4 (*Exception Filed in Civil District Court.*)

Filed November 24th, 1913.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

Exception.

Now into this Honorable Court, through counsel undersigned, comes Fernand V. Gasquet, appearing solely for the purpose of excepting to the petition herein filed, and for exception says:—

1. That the petition is too vague and uncertain and general and indefinite in its allegations to be safely answered and that exceptor is entitled to know specifically the infirmities from which it is alleged he is suffering and which it is alleged render him incapable of taking care of his person or administering his property.

2. That the petition discloses no right or cause of action.

Wherefore exceptor prays that these exceptions be maintained and that plaintiffs' suit be dismissed at their costs and for general relief.

(Signed) J. C. & THOS. GILMORE,
Att'ys for Exceptor.

The undersigned counsel for exceptor certify that the foregoing exceptions are filed in good faith and not for the purpose of delay.

Nov. 24, 1913.

(Signed) J. C. & THOMAS GILMORE.

5 *Supplemental and Amended Petition of Mrs. C. P. Fenner et al. for Judgment of Interdiction, Affidavit, and Order.*

Filed December 23rd, 1913.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

The supplemental and amended petition of Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner, duly authorized; of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, duly authorized, and of George F. Lapeyre and J. Martial Lapeyre, plaintiffs in the above entitled cause.

With respects represents:

I.

That your petitioners reiterate all of the allegations of their original petition as fully as though incorporated herein.

II.

That Fernand Vaughan Gasquet is subject to habitual state of insanity and madness although he at times, while under the influence of Narcotic drugs, appears to have the possession of his reason.

III.

That heretofore in the proceedings entitled "State of Louisiana vs. Fernand V. Gasquet, "No. 40,089 of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, on an indictment of said Fernand V. Gasquet for shooting with intent to murder one Isaac Broad otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912.

IV.

That thereupon the District Attorney for the Parish of Orleans on the 11th day of June 1912 represented to the said Criminal District Court, that under the Revised Statutes of 1870, Section 993, it is provided that whenever any person arrested to answer for any crime before any Court in this state, shall not be indicted by the Grand July by reason of insanity or mental derangement of such person, and the discharge or going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or peace of the State, that the Court was authorized to commit such person to the State Insane Hospital there to be detained until he be restored to his right mind; that said Fernand V. Gasquet had been declared insane and mentally deranged by the Grand Jury, that his discharge or going at large was dangerous to the safety of the Citizens and the peace of the State and that he should be committed to the Criminal Ward of the East Louisiana Hospital for the insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910 page 454.

V.

That said Criminal Court set the said application or rule down for hearing the 14th day of January, 1912; that said Fernand V. Gasquet was duly notified and on the 14th day of June 1912 a hearing was had contradictorily with said Gasquet who was placed at the bar of said Court in the custody of the Criminal Sheriff of the Parish of Orleans, and the hearing not being completed the same was continued to June 28th, 1912, and the Court having heard the evidence ordered the rule made absolute and further ordered that the defendant, Fernand V. Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he is cured — of sound mind. All of which more fully appear by duly certified copies of the Indictment, action of the Grand Jury thereon, and Minutes of the said Criminal District Court, annexed to and made part hereof.

VI.

That for lack of proper accommodations in the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, said Fernand V. Gasquet has remained in the custody of the Criminal Sheriff for the Parish of Orleans, and is now held in his custody.

VII.

That Fernand Vaughn Gasquet is addicted to the abuse of alcohol and addicted to narcotics, that he has a psychopatic constitution; that he has hardening of the arteries due to nephrites affecting his mental condition and suffers from delusions.

And that said Fernand Vaughn Gasquet is incapable of taking care of his person or administering his property, and — is therefore advisable and necessary that he be interdicted in accordance with law.

Wherefore petitioners pray that leave be granted to file this supplemental and amended petition, that the said Fernand Vaughn Gasquet be cited to appear and answer the same and that after due proceedings had there be judgment pronouncing his interdiction.

And petitioners pray for all general and equitable relief.

(Signed) DENEGRE, LEOVY & CHAFFE, *Att'ys.*

Martha J. Gasquet Westfeldt being duly sworn says that all of the allegations of fact made in the foregoing petition are
8 true except as to those allegations expressly made on information and belief, and that as to those affiant believes them to be true.

(Signed) MARTHA J. GASQUET WESTFELDT.

Sworn to and subscribed before me at New Orleans, Louisiana, on this the 19th day of December, A. D. 1913.

(Signed) PIERRE D. OLIVIER,

[SEAL.] *Not. Pub.*

Order.

Let the foregoing supplemental and amended petition be filed. Dec. 24, 1913.

(Signed) GEO. H. THEARD, *Judge.*

9 *Answer to Original, Supplemental, and Amended Petitions.*

Filed January 7th., 1914.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

To the Honorable the Civil District Court for the Parish of Orleans:

Now, into Court, comes Fernand V. Gasquet, made defendant herein, and without waiving any of the exceptions heretofore filed by him, for answer to the original petition and the supplemental and amended petition of plaintiffs, with respect shows:

I.

That respondent denies all and singular the allegations of said original petition.

II.

For answer to Paragraph I of the supplemental and amended petition, respondent denies all and singular the allegations thereof.

III.

For answer to Paragraph II of the Supplemental and amended petition, respondent denies all and singular the allegations thereof.

IV.

Respondent admits the allegations of the third paragraph of the Supplemental and amended petition.

V.

Respondent admits the allegations of the fourth paragraph of the supplemental and amended petition.

10

VI.

Respondent admits the allegations of the fifth paragraph of the supplemental and amended petition, and, in connection therewith, avers that, under Art. 133 of the Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil District Court for the Parish of Orleans; that the said Criminal District Court was, therefore, absolutely without any jurisdiction ratione materiae, and any finding of said court, under the circumstances detailed in said supplemental and amended petitions, was and is absolutely null and void ab initio, and, if carried into effect, would deprive respondent of his liberty, without trial by jury and without due process of law, in violation of Amendments 6 and 14 of the Federal Constitution and Articles 2, 6 and 9 of the State Constitution of 1898.

VII.

Respondent denies the allegation of the sixth paragraph of said supplemental and amended petition, for lack of information.

VIII.

Respondent denies the allegations of the seventh paragraph of said supplemental and amended petition, with the following qualification:

Respondent admits that he takes small quantities of morphine for the purpose of allaying physical pain, under the direction of a competent and reputable physician of the City of New Orleans, but not in such quantities as to impair or affect his mind and render him incapable of taking care of his person or administering his property.

Further answering respondent avers:

IX.

That he is in full possession of all his mental and physical faculties and is fully capable of both taking care of his person and administering his property.

11

X.

That Article 993 of the Revised Statutes of the State of Louisiana (1893) is absolutely null, void and of no effect, because, under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said article of the Revised Statutes provides for giving effect to the ex parte finding of an inquisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution.

Wherefore, respondent prays that this suit may be dismissed at plaintiffs' cost.

And for all general and equitable relief.

(Signed) WM. WINANS WALL,
J. C. & THOMAS GILMORE,
Att'ys.

Affidavit.

Personally came and appeared before me, the undersigned authority Fernand V. Gasquet, of age and a resident of this City, who being first by me duly sworn, deposes and says: that he is the defendant in the above and foregoing suit, and that all the allegations set forth in the above answer are true and correct.

(Signed) FERNAND VAUGHAN GASQUET.

Sworn to and subscribed before me at New Orleans, La., this sixth (6th) day of January, 1914.

(Signed) CHARLES SCHNEIDAU,
[SEAL.] *Not. Pub.*

12 *Judgment Civil District Court.*

Civil District Court Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

This cause having been argued, and submitted to the Court on the 2nd inst., and the Court having taken time to consider and being

duly advised, and by reason of the law and evidence in favor of plaintiffs and against defendant, and for reasons orally assigned.

It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet, is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of said defendant.

Judgment read and rendered in open Court on this 15th day of June, 1914.

Judgment read and signed in open Court on this 19th day of June, 1914.

(Signed) E. K. SKINNER, *Judge.*

13 *Motion and Order for Appeal.*

Filed June 19th., 1914.

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

Motion of Appeal.

On motion of Defendant, through Wm. Winans Wall, and J. C. & Thos. Gilmore, his attorney, and on suggesting to the Court that mover is aggrieved by the judgment herein rendered on the 15th day of June, 1914, and signed on the 19th day of June, 1914, in favor of plaintiffs; and that said judgment is contrary to the law and the evidence, and that mover desires to appeal therefrom to the Supreme Court of the State of Louisiana:

It is ordered that an appeal, in accordance with law, be granted to the said defendant, returnable to the Supreme Court of the State of Louisiana, on the 24th day of July, 1914, upon mover furnishing bond, with good and solvent security, in the sum of Two Hundred and Fifty Dollars, conditioned as the law directs.

(Signed) E. K. SKINNER, *Judge.*

Appeal Bond.

Filed June 19th, 1914.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "C."

No. 106,435.

14 Know all men by these present, That, we Fernand Vaughn Gasquet, as principal and Hamilton P. Jones, as surety, are held and firmly bound unto Thomas Connell, Clerk of the

Civil District Court, for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Two Hundred and Fifty ($250) Dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on this nineteenth day of June, in the year of our Lord one thousand nine hundred and fourteen.

Whereas, the above bounden Fernand Vaughn Gasquet have this day filed a motion of appeal from a final judgment rendered against him in the suit for his interdiction entitled Interdiction of Fernand Vaughn Gasquet No. 106,435 of the Civil District Court for the Parish of Orleans on the fifteenth day of June 1914, and signed on the nineteenth day of June, 1914.

Now the Condition of the Above Obligation is such, That the above bound Fernand Vaughn Gasquet shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him or that the same shall be satisfied by the proceeds of his estate real or personal, if he be cast in the appeal; otherwise that the said surety Hamilton P. Jones shall be liable in his place.

(Signed) FERNAND VAUGHN GASQUET, [SEAL.]
(Signed) HAMILTON P. JONES. [SEAL.]

Signed, sealed and delivered in the presence of—
—— ——.

15 Proceedings Had in the Supreme Court of the State of Louisiana, as Per Præcipe, to be Found at Page 1 of this Transcript.

(*Order Granting Motion to Advance.*)

Extract from Minutes.

At Chambers.

No. 20,784.

Interdiction of GASQUET.

NEW ORLEANS, Tuesday, September 8th., 1914.

The motion of William Winans Wall Esq. and J. C. & Thomas Gilmore, Esquires, of counsel for the defendant Fernand V. Gasquet having been favorably considered:—It is ordered by the Court that the above numbered and entitled cause be set down for hearing on the 21st day of October, 1914.

(*Cause Called and Continued.*)

(Extract from Minutes.)

NEW ORLEANS, Wednesday, October 21st, 1914.

The Court was duly opened, pursuant to adjournment.

Present:—Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Neill, Associate Justices.

No. 20784.

Interdiction of FERNAND V. GASQUET

This cause came on this day to be heard, but was ordered
16 by the Court to be continued, on the motion of Mr. W. W. Wall, who informed the Court of the absence from the city of Mr. George Denegre, one of the counsel for the plaintiffs, appellees.

Order Granting Motion to Advance.

(Extract from Minutes.)

NEW ORLEANS, Wednesday, October 21st, 1914.

The Court was duly opened, pursuant to adjournment. Present:—Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of Fernand Vaughan Gasquet, defendant and appellant herein, through his attorneys, J. C. & Thomas Gilmore and William Winans Wall:—It is ordered by the Court that this cause be assigned for trial at 11 o'clock, A. M., November 4th, with preference over all other cases assigned for trial on that day.

17 *Plea of Res Adjudicata.*

Supreme Court of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

Now, into Court, through undersigned counsel, comes Fernand Vaughan Gasquet, and moves the Court to be informed:

I.

That in the supplemental and amended petition for the interdiction of said Fernand Vaughan Gasquet, it is alleged:

"That heretofore in the proceedings entitled 'State of Louisiana versus Fernand Vaughan Gasquet,' No. 40,089, of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, on an indictment of said Fernand Vaughan Gasquet for shooting with intent to murder one Isaac Broad otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912.

"That thereupon the District Attorney for the Parish of Orleans, on the 11th day of June, 1912, represented to the said Criminal District Court that under the Revised Statutes of 1870, Section 993, it is provided that whenever any person arrested to answer for any crime before any Court in this State, shall not be indicted by the Grand Jury by reason of insanity, or mental derangement of such person, and the discharge, or going at large of such person shall be deemed by the Court dangerous to the safety of the citizens and peace of the State, the Court was authorized to commit such person to the State Insane Hospital, there to be detained until he be restored to his right mind; that the said Fernand Vaughan
18 Gasquet had been declared insane and mentally deranged by the Grand Jury, that his discharge, or going at large, was dangerous to the safety of the citizens and the peace of the State, and that he should be committed to the Criminal Ward of the East Louisiana Hospital for the insane, as is provided in the aforesaid section of the Revised Statutes, and according to the terms of Act 264 of 1910, page 454.

"That said Criminal District Court set the said application, or rule, down for hearing, the 14th day of January, 1912; that said Fernand Vaughan Gasquet was duly notified, and on the 14th day of June, 1912 a hearing was had contradictorily with said Gasquet, who was placed at the bar of said Court in the custody of the Criminal Sheriff of the Parish of Orleans, and the hearing not being completed, the same was continued to June 28th, 1912, and the Court having heard the evidence, ordered the rule made absolute, and further ordered that the defendant, Fernand Vaughan Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he is cured, and of sound mind. All of which will more fully appear by duly certified copies of the indictment, action of the Grand Jury thereon, and the minutes of said Criminal District Court, annexed to and made part hereof.

"That for lack of proper accommodation in the Louisiana State Asylum for the criminal insane at Jackson, Louisiana, said Fernand Vaughan Gasquet has remained in the custody of the Criminal Sheriff for the Parish of Orleans, and is now in his custody."

Transcript pages 10, 11 and 12, 13, 14, 15 and 16.

Extract from Plaintiffs' petition.

II.

That issue was joined by appearer on all the allegations of the petition of plaintiffs, and particularly the allegations relating to the shooting of the negro, Isaac Brown, as well as the proceedings
19 in the Criminal District Court by reason thereof, alleged by plaintiffs, as follows:

Respondent admits the allegations of the Fifth Paragraph of the supplemental and amended petition, and in connection therewith avers that under Article 133 of the Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil District Court for the Parish of Orleans; that the said Criminal District Court was, therefore, absolutely without jurisdiction, ratione materiae, and any finding of said Court, under the circumstances detailed in said supplemental and amended petition, was and is absolutely null and void ab initio, and, if carried into effect would deprive respondent of his liberty without trial by Jury, and without due process of law, in violation of Amendments 6 and 14 of the Federal Constitution, and Articles 2, 6 and 9 of the State Constitution of 1898.

That Article 993 of the Revised Statutes of the State of Louisiana is absolutely null, void, and of no effect, because under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said Article of the Revised Statutes provides for giving effect to the ex parte finding of an inquisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law in violation of the Bill of Rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution."

Transcript pages 17 and 18.

Extract from Defendant's answer.

III.

That on these issues inter alia the case was tried and judgment of interdiction pronounced against the defendant, Fernand
20 Vaughan Gasquet, on the 15th day of June, 1914.

Transcript page 1162.

IV.

That subsequent to said judgment of interdiction, to-wit, on the 30th day of June, 1914, the said Fernand Vaughan Gasquet applied to the Court of Appeal- for this Parish for a writ of habeas corpus ordering his release from the custody of the Criminal Sheriff, and vacating and annulling the proceedings of the Grand Jury and said Criminal District Court; that on hearing, on the 7th day of July, 1914, the Court of Appeal-, after a full investigation of the mental condition of said Fernand Vaughan Gasquet, found the said Fernand Vaughan Gasquet sane, and entitled to his liberty, and ordered

the said Criminal Sheriff to release the said Fernand Vaughan Gasquet from custody forthwith, as will more fully and at large appear by reference to the transcript of the record in said habeas corpus proceedings, hereto annexed and made part hereof.

V.

That the said judgment of the Court of Appeals is decisive of the sanity of Fernand Vaughan Gasquet at a time subsequent to the judgment of interdiction, and constitutes res adjudicata of all the issues heard before the Civil District Court, and now pending on appeal in this Court, and is particularly res adjudicata of the effect to be given to the proceedings of the Grand Jury and the Criminal District Court aforesaid, and that appearer especially pleads the judgment of said Court of Appeals as estoppel by judgment and res adjudicata of all the issues presented on this appeal.

Appearer further shows that the said judgment of the Court of Appeals if not given full effect, will deprive appearer of his liberty and property and status in society, without trial by jury, without a judicial hearing and without due process of law, in violation of the Bill of Rights of the Constitution of the State of Louisi-
21 ana, and Amendments 6 and 14 of the Constitution of the United States.

Wherefore, appearer prays that this plea of res adjudicata be maintained and that the judgment of the Civil District Court pronouncing the interdiction of Fernand Vaughan Gasquet be annulled, avoided and reversed, and that there be judgment decreeing the said Fernand Vaughan Gasquet sane, and capable of taking care of his person and property.

(Signed) WM. WINANS WALL,
" J. C. & THOMAS GILMORE,
Attorneys for Fernand Vaughan Gasquet, Defendant, Appellant.

(Endorsed on reverse:) No. 20,784. Supreme Court of Louisiana—Interdiction of Fernand Vaughan Gasquet—Plea of res adjudicata—Filed Nov. 4, 1914. (Signed) Paul E. Mortimer, Clerk.

22 *Transcript of Record of Court of Appeals on Writ of Habeas Corpus.*

Supreme Court of Louisiana.

Filed Nov. 4, 1914. (Signed) Paul E. Mortimer, Clerk.

"Transcript of Record, Court of Appeals."

STATE OF LOUISIANA:

Court of Appeals, Parish of Orleans.

No. 6198.

STATE ex Rel. FERNAND VAUGHAN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Petition.

To the Honorable the Court of Appeals for the Parish of Orleans, State of Louisiana, or any Judge of said Court:

The petition of the State of Louisiana, on the relation of Fernand Vaughan Gasquet, of lawful age and a resident of this City, with respect shows:

That relator was charged before the Grand Jury of the Parish of Orleans of having shot, on April 28, 1912, with a shot gun, with felonious intent in so doing, feloniously, wilfully and of his malice aforethought to kill and murder one Isaac Broad, otherwise known as Isaac Brown, and that on June 7, 1912, the said Grand Jury returned on said indictment or presentation "Not a true bill, on the ground of insanity," all of which will appear more fully from said indictment or presentation and the endorsements thereon, annexed hereto as part hereof, and marked Exhibit "A."

That on June 28, 1912, relator was committed to the Criminal Ward of the East Louisiana Hospital for the Insane by Frank D. Chretien, Judge of Section B of the Criminal District Court for the Parish of Orleans, pretending to act pursuant to and by virtue of the authority of Section 993 of the Revised Statutes of Louisi-
23 ana, and that, by reason of said commitment, relator is now in the custody of Matthew J. Long, Criminal Sheriff of the Parish of Orleans, State of Louisiana, and deprived of his liberty, all of which will appear more fully by the copy of the rule for commitment and the endorsement thereon, annexed hereto as part hereof, and marked Exhibit "B."

That by the Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil District Court of the Parish of Orleans.

That Section 993 of the Revised Statutes was repealed by Act No.

253 of 1910 of the Session of the General Assembly for the State of Louisiana.

That Act No. 264 of the Session of 1910 of the General Assembly of the State of Louisiana refers, in terms, only to those who are charged or convicted of the commission of crime at the time of the commitment.

That at the time of relator's commitment, as hereinbefore set forth, he was neither charged with nor convicted of any crime, and, therefore, did not fall within the purview of said act No. 264 of the Session of the General Assembly of the State of Louisiana.

That by Act No. 253 of the Session of 1910 of the General Assembly of the State of Louisiana, and by Article 133 of the Constitution of the State of Louisiana for the year 1898, the Civil District Court was vested with exclusive jurisdiction to commit relator to an insane asylum, and, therefore, his said alleged commitment was by a court absolutely without jurisdiction ratione materiae, and was, therefore, absolutely null and void and of no effect.

That Section 993 of the Revised Statutes of the State of Louisana is also absolutely null, and void and of no effect, because said Section of the Revised Statutes provides for giving effect to the ex parte finding of the Grand Jury, which is an inquisitorial body,
24 without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and of Amendments Six and Fourteen of the Federal Constitution, the proceedings of Grand juries being ex parte and secret and affording to the person whose rights of liberty and property and status in society that may be affected thereby no opportunity to appear and present his defense.

That Act No. 264 of 1910, and particularly Section 4 thereof, is absolutely unconstitutional, null and void, and in violation of the bill of rights of the State Constitution and Amendments Six and Fourteen of the Federal Constitution, in that said act provides that when any person charged with a falony necessarily punishable in the State Penitentiary, or by death, has been adjudged insane, before or after trial or conviction, and shall be committed to a State Hospital for the Insane, such person shall not be discharged from said Hospital for the Insane or delivered into the custody of the proper sheriff until the Superintendent of the East Louisiana Hospital for the Insane of the State of Louisiana, the Superintendent of the Louisiana Hospital for the Insane, and in case of their disagreement, a physician appointed by the Judge of the District Court from whence said criminal insane person was committed, which said gentlemen are hereby constituted as a commission, shall be satisfied, after a thorough examination, that such person has been completely restored to sanity and may be discharged without danger to others.

That the said provisions of the said act leaves a person committed to said asylum entirely at the mercy of the said parties who are vested with exclusive authority to certify to his sanity vel non, and

deprive the said person committed to the said asylum of a
25 judicial hearing, due process of law and trial by jury, in violation of the State Constitution and Amendments Six and Fourteen of the Federal Constitution.

That said act is violative of Article 96 of the State Constitution, in that it delegates judicial powers in violation of said Article.

That relator is harmless and his going at large would not constitute a menace or be dangerous to the public safety, as will appear more fully by the affidavit of Jos A. O'Hara, Coroner of the City of New Orleans, annexed hereto as part hereof, and marked Exhibit "C."

Wherefore, the premises and annexed affidavit being considered. relator prays that a writ of Habeas corpus may issue herein, directed to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, commanding him to bring and produce Fernand Vaughn Gasquet before this Honorable Court on such day and at such hour as the court may appoint; and that, after due hearing, the said Fernand Vaughn Gasquet be at once released and restored to liberty.

(Signed) WM. WINANS WALL,
J. C. & THOMAS GILMORE,
Attorneys.

(Signed) FERNAND VAUGHN GASQUET.

Affidavit.

Before me, the undersigned authority, personally came and appeared, Fernand Vaughn Gasquet, the relator herein, who being duly sworn, deposes and says; that all the allegations of the foregoing petition are true and correct.

(Signed) FERNAND VAUGHN GASQUET.

Sworn to and subscribed before me at New Orleans, La., this 25th day of June, 1914.

(Signed) CHARLES SCHNEIDAU,
Notary Public.

26 *Order.*

Let a writ of habeas corpus issue as herein prayed for and according to law, directed to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, commanding him to produce Fernand Vaughn Gasquet before the Court of Appeal- for the Parish of Orleans, and then and there to show cause why said Fernand Vaughn Gasquet is detained, and why he should not be at once released and set at liberty, and let said writ be made returnable on Tuesday the 7th day of July, in the year 1914, at 11 o'clock A. M.

(Signed) JOHN ST. PAUL, *Judge.*

A true copy,

(Signed) H. J. STANBURY, *D'y Clerk.*

Filed June 30th, 1914.

[SEAL.]

(Signed) JOHN SCHRODER, *Clerk.*

3—116

EXHIBIT "A."

STATE OF LOUISIANA,
Parish of Orleans, ss:

Criminal District Court for the Parish of Orleans.

The Grand Jurors of the State of Louisiana, duly empaneled an sworn in and for the body of the Parish of Orleans, in the nam and by the authority of the said State, upon their oath,

Present: That one Fernand Vaughn Gasquet, late of the Paris of Orleans, on the twenty-eighth day of April, in the year of ou Lord, one thousand, nine hundred and twelve, with force and arm in the Parish of Orleans aforesaid, and within the jurisdiction c the Criminal District Court for the Parish of Orleans, with a ce tain dangerous weapon, to-wit: a shot gun, feloniously did shoot on Isaac Broad, otherwise known as Isaac Brown, with th
27 felonious intent in so doing, feloniously, wilfully and of h malice aforethought to kill and murder the said Isaac Broa otherwise known as Isaac Brown.

Contrary to the form of the Statute of the State of Louisiana i such case made and provided against the peace and dignity of th same.

(Signed) ST. CLAIR ADAMS,
District Attorney for the Parish of Orleans.

Motion filed to commit to the Insane Asylum.
(Signed) CHAS. J. REILLY, *D'y Clerk.*

June 11th, 1912.
Motion Continued.
June 14th, 1912.
Committed by order of the Court to the Louisiana State Asylu for the Criminal Insane at Jackson, La.
(Signed) W. S. PATRICK,
Minute Clerk.

Section —.

No. 20089.

STATE OF LOUISIANA
vs.
FERNAND VAUGHAN GASQUET.

Indictment for Shooting with Intent to Murder.

Not a true bill, on the ground of insanity.
(Signed CHARLES JANVIER,
Foreman of Grand Jury.

NEW ORLEANS, LA., June 7th, 1912.

Returned into open Court and recorded and filed June 7th, 1912.

(Signed) W. S. PATRICK,
Minute Clerk.

Filed June 30th, 1914.

(Signed) JOHN SCHRODER,
Clerk of Court of Appeal-, Parish of Orleans.

A true copy.

[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., November 4th, 1914.

28 No. 40,089.

Criminal District Court, Section "B."

STATE OF LOUISIANA
vs.
FERNAND V. GASQUET.

EXHIBIT "B."

Motion to Commit to Insane Asylum.

Now into Court here comes St. Clair Adams, District Attorney for the Parish of Orleans, who prosecutes on behalf of the State of Louisiana, and gives the Court here to understand and be informed that the Grand jury for the Parish of Orleans, in the above numbered and entitled cause, returned, "Not a True Bill," upon the ground of insanity.

That under the Revised Statutes of 1870, sec. 993, it is provided that whenever any person arrested to answer for any crime before any court in this State, shall be indicted by the Grand Jury by reason of insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or the peace of the State, that the Court is authorized and empowered to commit such person to the State Insane hospital, there to be detained until he be restored to his right mind or otherwise delivered by due course of law;

That the defendant, Fernand Vaughn Gasquet has been declared insane and mentally deranged by the Grand Jury; that his discharge and going at large is dangerous to the safety of the Citizens and the peace of this State; that he should be committed to the Criminal Ward, of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the term of Act 264 of 1910, p. 454.

Order.

It is ordered, by the court, that the matter of the Stat
29 of Louisiana versus Fernand Vaughn Gasquet be set dow
upon the docket for trial for Friday, June 14th, 1912, i
order that the Court may be advised and instructed as to whethe
said Fernand Vaughn Gasquet is in such a mental condition as t
be dangerous to the peace and good order of the community, and i
order that it be determined whether or not he shall be committed t
the ward for the Criminal Insane in the East Louisiana Hospit
for the Insane, there to be kept in custody, treated and cared fo
until he has been completely restored to sanity.

(Signed) FRANK D. CHRETIEN, *Judge.*

New Orleans, La., June 11th, 1912.

Filed June 11th, 1912.
(Signed) W. S. PATRICK,
Minute Clerk.

Rule made absolute.
(Signed) W. S. PATRICK,
Minute Clerk.

June 28th, 1912.

Filed June 30th, 1914.
(Signed) JOHN SCHRODER,
Clerk Court of Appeal.

A true copy,
(Signed) H. J. STANSBURY,
[SEAL.] *D'y Clerk.*

New Orleans, La. November 4th, 1914.

STATE OF LOUISIANA:

Court of Appeal-, Parish of Orleans.

STATE OF LOUISIANA ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

EXHIBIT "C."

Affidavit.

Before me, the undersigned authority, personally came and ap
peared, Joseph A. O'Hara, of age and of this Parish, wh
30 being duly sworn, deposes and says, that he is the Corone
of the Parish of Orleans; that he is well acquainted wit

Fernand Vaughn Gasquet and his present condition, mentally and physically; that said Fernand Vaughan Gasquet is sane, responsible and harmless, and his release from custody would not be a menace or dangerous to the public safety.

(Signed) J. A. O'HARA, *M. D.*

Sworn to and subscribed before me at New Orleans, La., this 25th day of June, 1914.

(Signed) CHARLES SCHNEIDAU,
Notary Public.

Filed June 30th, 1914.

(Signed) JOHN SCHRODER,
Clerk Court of Appeal-, Parish of Orleans.

A true copy,

(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.].

New Orleans, La., November 4th, 1914.

STATE OF LOUISIANA:

Court of Appeal-, Parish of Orleans.

No. 6198.

STATE OF LOUISIANA ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Writ of Habeas Corpus.

The State of Louisiana to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, New Orleans, Louisiana, Greeting:

You are hereby commanded in the name of the State of Louisiana and of the Court of Appeal- for the Parish of Orleans, to produce before the Court of Appeal-, for the Parish of Orleans, at New Orleans, Louisiana, on the seventh day of July, in the year 1914 A. D. at Eleven o'clock A. M., Fernand Vaughan Gasquet and to then
31 and there show cause why he is detained and why he should not be at once released from custody and given his liberty.

And herein fail not under penalty of the law.

Witness the Honorables John St. Paul, Emile Godchaux, and Charles F. Claiborne, Judges of Our said Court, this first day of July in the year of our Lord One Thousand Nine Hundred and Fourteen.

(Signed) H. J. STANSBURY,
D'y Clerk.

July 1st, 1914.

A true copy,

(Signed) H. J. STANSBURY,
[SEAL.] *D'y Clerk.*

New Orleans, La., November 4th, 1914.

STATE OF LOUISIANA:

Court of Appeal-, Parish of Orleans.

No. 6198.

STATE OF LOUISIANA ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff, Parish of Orleans.

Answer of Matthew J. Long.

And now into Court comes Matthew J. Long, Criminal Sheriff for the Parish of Orleans, and in accordance with the Order of this Honorable Court, produces Fernand Vaughn Gasquet; and he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, says that he holds, as Criminal Sheriff of this Parish, the said Fernand Vaughan Gasquet, under a commitment issued by the Honorable the Criminal District Court for the Parish of Orleans, a copy of which said commitment is hereto annexed, which ordered that the defendant, Fernand Vaughn Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson,
Louisiana, until such time as he be cured and of sound
32 mind, said commitment being signed on June 28th, 1912,
by the Minute Clerk of said Court, as is further shown by a copy hereto annexed.

And he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, does further say that the said Fernand Vaughn Gasquet has not, up to this time, been sent to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, because the said Insane Asylum could not receive him, and up to this time have been unable to receive him as a patient.

And he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, annexes copy of the Indictment No. 40,089 now on file in the Criminal District Court for the Parish of Orleans, copy of the motion filed by the District Attorney, based on the finding of the Grand Jury, and a certified copy of the Minutes of the Court, showing the disposition of the said motion.

STATE OF LOUISANA,
Parish of Orleans,
City of New Orleans:

Before me, Charles Reilly, Deputy Clerk, Criminal District Court, personally appeared:—Matthew J. Long, who being first duly sworn, did dispose and *that*:—That he is the Criminal Sheriff for the Parish of Orleans, and that the foregoing return made by him to the writ of habeas corpus issued herein is true and correct in every respect.

(Signed) MATT. J. LONG,
Criminal Sheriff Ph. Orleans.

Sworn to and subscribed before me this third day of July, A. D. One Thousand, nine hundred and fourteen (1914).

(Signed) CHAS. J. REILLY,
Deputy Clerk, Criminal Dist. Court, Ph. Orleans.

33 EXHIBIT "A."

STATE OF LOUISIANA:
Parish of Orleans, ss:

Criminal District Court for the Parish of Orleans.

The Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath,

Present: That one Fernand Vaughn Gasquet, late of the Parish of Orleans, on the twenty eighth day of April, in the year of our Lord, one thousand, nine hundred and twelve, with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, with a certain dangerous weapon, to-wit: a shot gun, feloniously did shoot one Isaac Broad, otherwise known as Isaac Brown, with the felonious intent in so doing, feloniously, wilfully and of his malice aforethought to kill and murder the said Isaac Broad, otherwise known as Isaac Brown.

Contrary to the form of the Statute of the State of Louisiana in such case made and provided against the peace and dignity of the same.

(Signed) ST. CLAIR ADAMS,
District Attorney for the Parish of Orleans.

Motion filed to commit to the Insane Asylum.
(Signed) CHAS. J. REILLY,
D'y Clerk.

June 11th, 1912.
Motion Continued.
June 14th, 1912.
Committed by order of the Court to the Louisiana State Asylum for the Criminal Insane at Jackson, La.

(Signed) W. S. PATRICK,
Minute Clerk.

34 Section —.

No. 40089.

STATE OF LOUISIANA
VS.
FERNAND VAUGHN GASQUET.

Indictment for Shooting with Intent to Murder.

Not a true bill, on the ground of insanity.
(Signed) CHARLES JANVIER,
Foreman of the Grand Jury.

New Orleans, La., June 7th, 1912.

Returned into open Court and recorded and filed June 7th, 1912.
(Signed) W. S. PATRICK,
Minute Clerk.

Filed June 30th, 1914.
(Signed) JOHN SCHRODER,
Clerk of Court of Appeal, Parish of Orleans.

A true copy,
(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.]

New Orleans, La., November 4th, 1914.

Criminal District Court, Section "B."

No. 40089.

STATE OF LOUISIANA
vs.
FERNAND V. GASQUET.

EXHIBIT "B."

Motion to Commit to Insane Asylum.

Now into Court here comes St. Clair Adams, District Attorney for the Parish of Orleans, who prosecutes on behalf of the State of Louisiana, and gives the Court to understand and be informed that the Grand Jury for the Parish of Orleans, in the above numbered and entitled cause, returned, "Not a True Bill," upon the ground of insanity.

35 That under the Revised Statutes of 1870, sec. 993, it is provided that whenever any person arrested to answer for any crime before any court in this State, shall be indicted by the Grand Jury by reason of insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or the peace of the State, that the Court is authorized and empowered to commit such person to the State insane hospital, there to be detained until he be restored to his right mind or otherwise delivered by due course of law;

That the defendant, Fernand Vaughn Gasquet has been declared insane and mentally deranged by the Grand Jury; that his discharge and going at large is dangerous to the safety of the Citizens and the peace of this State; that he should be committed to the Criminal Ward, of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910, p. 454.

Order.

It is ordered, by the court, that the matter of the State of Louisiana versus Fernand Vaughn Gasquet be set down upon the docket for trial for Friday, June 14th, 1912, in order that the Court may be advised and instructed as to whether said Fernand Vaughn Gasquet is in such a mental condition as to be dangerous to the peace and good order of the community, and in order that it be determined whether or not he shall be committed to the ward for the Criminal Insane in the East Louisiana Hospital for the Insane, there to be kept in custody, treated and cared for until he has been completely restored to sanity.

(Signed) FRANK D. CHRETEIN, *Judge.*

New Orleans, La., June 11th, 1912.

36 Filed June 11th, 1912.
(Signed) W. S. PATRICK,
Minute Clerk.

Rule made absolute.
(Signed) W.S. PATRICK,
Minute Clerk.

June 28th, 1912.

Filed June 30th, 1914.
(Signed) JOHN SCHRODER,
Clerk Court of Appeal.

A true copy.
(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.]

New Orleans, La., November 4th, 1914.

STATE OF LOUISIANA,
Parish of Orleans:

Criminal District Court for the Parish of Orleans.

Friday, the 28th day of June, 1912.

Present: The Honorable Frank D. Chretian, Judge of the said Court.

Section "B."

No. 40089.

STATE OF LOUISIANA
vs.
FERDINAND VAUGHAN GASQUET.

Indictment for Shooting with Intent to Murder.

It is this day ordered by the Court, that the defendant, Ferdinand Vaughn Gasquet, be Committed to the Louisiana State Asylum for

the Criminal Insane, at Jackson, Louisiana, until such time as he be cured and of sound mind.

Extract from the Minutes of This Court.

CLERK'S OFFICE, June 28th, 1912.

(Signed) W. S. PATRICK,
Minute Clerk.

A true copy.
(Signed) H. J. STANSBURY,
D'y Clerk. [SEAL.]

New Orleans, November 4th, 1914.

37 Criminal District Court, Parish of Orleans.

NEW ORLEANS, LA., July 3rd, 1914.

I, Charles J. Reilly, a Deputy Clerk of the Criminal District Court do hereby certify that the foregoing is a true and correct copy, as the same appears on file and of record in the Clerk's Office of the Criminal District Court in the case of the State of Louisiana versus Ferdinand Vaughn Gasquet, No. 40089.

In testimony whereof I hereunto sign my name and affix the seal of the State of Louisiana, at the City of New Orleans, this 3rd day of July, 1914.

(Signed) CHAS. J. REILLY,
D'y Clerk.

A true copy.
(Signed) H. J. STANSBURY, *D'y Clerk.* [SEAL.]

New Orleans, November 4th, 1914.

Court of Appeal- State of Louisiana, Parish of Orleans.

STATE ex Rel. FERNAND VAUGHAN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

38 *Per Curiam:*

In June 1912 the relator was committed to the State Insane Asylum by the Criminal District Court, under Sec. 993 R. S. on the ground that he was then in such mental condition as to constitute a menace to the safety of citizens and the peace of the State. This commitment was however never carried out and he is still in the custody of the Criminal Sheriff of Orleans Parish.

He now applies to this Court for his release by Habeas Corpus on the ground that those conditions no longer exist, that he has recovered his sanity and that it would no longer endanger the safety and peace of the community that he be restored to his liberty.

The only evidence adduced fully establishes his contention; there is no evidence whatever to the contrary.

Under Art. 104 Constitution of 1913 this Court has the power to issue the writ of Habeas Corpus in such cases that is "at the instance of any person in actual custody" within this Circuit.

Art. 822 par. 2 and Art. 824, Code of Practice, authorize the release of the Relator under the circumstances; that is to say
39 when the change in conditions render the confinement no longer necessary or legal.

It is therefore ordered that the Writ of Habeas Corpus issued herein be made peremptory; and accordingly that the Relator Fernand Vaughn Gasquet be discharged and released from Custody forthwith.

New Orleans, La., July 7th, 1914.

A true copy.

(Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., November 4th. 1914.

40 (*Cause Called, Argued and Submitted.*)

(Extract from Minutes.)

NEW ORLEANS, Wednesday, November 4th, 1914.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

This cause came on this day to be heard. Mr. George Denegre opened for the plaintiff, appellee; Mr. Thomas Gilmore, who was followed by Mr. W. W. Wall replied for the defendant, appellant, F. V. Gasquet. The court then took the cause under consideration.

(*Final Judgment.*)

(Extract from Minutes.)

NEW ORLEANS, Monday, January 25th, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Theirs Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Neill, Associate Justices.

His Honor, Mr. Justice O'Neill, pronounced the opinion and judgment of the Court in the following case:

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

The judgment appealed from is affirmed, at the cost of the estate of the appellant.

41 *Opinion of the Supreme Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, Monday, January 25, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice; Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Charles A. O'Neill, Associate Justices.

His Honor, Mr. Justice O'Neill, pronounced the opinion and Judgment of the Court in the following cases:

42 Mr. Justice O'Neill.

MONDAY, January 25th, 1915.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

Appeal from the Civil District Court, Parish of Orleans, Hon. E. K. Skinner, Judge.

The defendant has appealed from a judgment of interdiction. The suit was filed by his two married sisters and his two uncles, who, as far as the record discloses, are his nearest relations. During the trial, the two sisters discontinued their suit, or withdrew as plaintiffs in the case, in order that their husbands be competent witnesses. The defendant's mother had brought suit to have him interdicted; she died about a month afterwards, and the present suit was filed a few days after her death.

In their original petition in this case, as in the petition previously filed by the defendant's mother, the interdiction is prayed for on the allegation merely that, on account of his infirmities, Fernand Vaughan Gasquet is incapable of taking care of his person or of administering his property, and that it is therefore advisable and necessary that he be interdicted.

The defendant filed exceptions to the petition, that its allegations were vague, uncertain and indefinite and did not disclose a right or cause of action.

Thereupon, the plaintiffs filed a supplemental and amended petition, alleging: that the defendant was subject to a habitual state of madness, although, at times, while under the influence of narcotic drugs, he appeared to have possession of his reason; that the grand Jury had, on the 7th of June, 1912, on an indictment
43 in which the defendant was charged with shooting with intent to murder one Isaac Brown, returned not a true bill, on account of the insanity of the defendant; that, on the petition of the district attorney, on account of the grand jury's finding that Mr. Gasquet was insane, and in accordance with the provisions of Section 993 of the Revised Statutes, he was made defendant in a rule to show cause why he should not be committed to the criminal ward of the state hospital for the insane, and, after a trial had contradictorily with the defendant, he was adjudged a dangerous insane person and was committed to the asylum for the criminal insane, by a judgment of the criminal district court; that, because of a lack of accommodations for the criminal insane in the state asylum, Mr. Gasquet remained in the custody of the criminal sheriff of the Parish of Orleans; that he was addicted to the abuse of alcohol and to taking narcotics; that he had a psycopathic constitution and hardening of the arteries, due to nephrites, affecting his mental faculties; and that he suffered from delusions.

In his answer, the defendant denied every allegation in the plaintiffs' petitions except the allegations referring to his prosecution for shooting Isaac Brown with intent to murder and the consequent commitment of the defendant to the asylum for the criminal insane. He contends that the criminal district court had no jurisdiction or authority to render the judgment declaring him insane and committing him to the asylum for the criminal insane. He contends that section 993 of the revised statutes, under authority of which he was committed to the asylum for the criminal insane, is null and of no effect because it violates the article of the constitution vesting jurisdiction and authority to pronounce interdiction in the civil district court exclusively, and because it seeks to deprive a person of his liberty without due process of law. He admitted, in his answer, that he took small quantities of morphine for the purpose of allaying physical pain, but that this was under
44 the direction of a competent and reputable physician, and not in such quantities as to effect his mind or render him incapable of taking care of his person or of administering his property.

The authority under which the criminal district court committed Mr. Gasquet to the insane asylum is found in the following sections of the revised statutes:

Section 993. Whenever any person, arrested to answer for any crime or misdemeanor before any court of this state, shall be acquitted thereof by the jury, or shall not be interdicted by the grand jury by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or to the peace of the state, the court is authorized and empowered

to commit such person to the state insane hospital or any similar institution in any parish within the jurisdiction of the court, there to be detained until he be restored to his right mind or otherwise delivered by due course of law.

Section 994. Whenever the grand jury, upon any inquiry which they may make as to the commission of any crime or misdemeanor by any person, shall omit to find a bill for the causes aforesaid, it shall be the duty of such jury to certify the same to the court.

Section 995. Whenever the jury, upon the general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be their duty, in giving their verdict of not guilty, to state that it was for such cause.

These sections of the revised statutes do not authorize the criminal court to render a judgment of interdiction. They only provide for the safe keeping of insane persons who are accused of crime (not indicted or not convicted on account of their insanity) and who would be dangerous to society if allowed to go at large. These provisions of the law therefore do not violate the article of the constitution which confers upon the civil district court ex-
45 clusive jurisdiction to pronounce judgment of interdiction. Nor do they deprive a person of his liberty without due process of law, which means due notice and opportunity to be heard.

Several days after the judgment of interdiction was rendered in this case in the district court, the attorneys for the defendant presented a petition to the court of appeal, setting forth the proceedings had in the criminal district court, and praying for a writ of habeas corpus to be directed to the criminal sheriff commanding him to produce Mr. Gasquet in court, and praying that, after due hearing the latter be at once released from custody and restored to his liberty. The court of appeal issued the writ, and assuming original jurisdiction, and after hearing testimony, rendered a judgment in the proceeding against the sheriff, declaring that the relator, Gasquet, had recovered his sanity; and that his being restored to his liberty would no longer be dangerous to the community, and ordering him discharged and released from custody.

When the case was called for argument in this court, the appellant's counsel filed a plea of res adjudicata, founded upon the judgment which had been rendered by the court of appeal in the proceedings had against the criminal sheriff while the present appeal was pending here.

The court of appeal had no jurisdiction or authority to revoke or set aside the judgment rendered by the criminal district court committing Mr. Gasquet to the state asylum for the criminal insane; nor had the court of appeal jurisdiction of the subject matter of the interdiction of Mr. Gasquet. Although article 104 of the constitution provides that the courts of appeal and each of the judges thereof shall have power to issue the writ of habeas corpus at the instance of any person in actual custody, it does not follow that, after issuing such writ, the court may go on and exercise unlimited jurisdiction. Under article 85 of the constitution, the jurisdiction

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of the supreme court extends to suits for interdiction. And
46 article 98 provides that the jurisdiction of the courts of appeal shall extend to all cases, civil and probate, of which the civil district court of the Parish of Orleans or the district courts throughout the state have exclusive original jurisdiction and of which the supreme court is not given jurisdiction, when the matter in dispute or the fund to be distributed shall not exceed two thousand dollars, exclusive of interest.

The commitment rendered by the criminal district court in consequence of the criminal prosecution of Mr. Gasquet was not a judgment of interdiction; nor do the plaintiffs contend that it was. Hence, if the court of appeal had authority to set aside the commitment of the criminal district court and release Mr. Gasquet from the custody of the criminal sheriff, the judgment of the court of appeal would, nevertheless, have no effect upon the judgment of interdiction rendered by the civil district court in this suit.

The defense of this case, on its merits, is that the evidence of the conduct and mental condition of the defendant during the period from 1896 to 1912 is of no importance—that the plaintiffs have only proven, according to the testimony of their expert witnesses, that the defendant is morally insane, and that a morally insane person is only a profligate. Interdiction is not allowed on account of profligacy or prodigality. (R. C. C. 426).

In the cross-examination of one of the experts who had testified to the defendant's insanity, one of the attorneys for the defendant embodied in a question the standard lexicographers' definition of a profligate, and asked the doctor if a person of that description was a morally insane person; and the doctor answered in the affirmative. The question propounded was:

"Q. I understand from my general examination of you, then, that a person who is not an idiot, who is not an imbecile, who is not a senile dement who has no structural brain lesions, who
47 is not a maniac, and who has no delusions, illusions or hallucinations, but is an abandoned, dissolute, vitiated, depraved, vicious, wicked person, ruined in morals, abandoned to vice, lost to virtue or decency; extremely vicious; shamelessly wicked—an abandoned person; one who has lost all regard for principles of virtue and all decency, is a morally insane person?"

From the doctor's admission that a person described in the foregoing question is a morally insane person, and the description being that of a profligate, it is argued by the defendant's counsel that moral insanity and profligacy are synonymous and convertable terms; and that, therefore, under the article of the civil code quoted above, interdiction is not allowed on account of moral insanity.

This court said, in the case of State vs. Lyons, 113 La. 962, 37 South. 892, where a plea of insanity was urged by the defendant as an excuse for homicide:

"The doctrine of moral insanity, which consists of irresistible impulse co-existent with mental sanity, has no support either in psychology or law."

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In the question above quoted, it is observed that all classes of insane persons—an idiot, imbecile, a senile dement, a person with structural lesions, a maniac, and a person having delusions, illusions or hallucinations—are excepted from the description of depravity which the lexicographers call profligacy and which the expert witness calls moral insanity. The fact that the authorities on insanity or psychology call profligacy moral insanity does not dispense with the provisions of our code, that interdiction is not allowed on account of profligacy.

Article 389 of the civil code provides that no person above the age of majority who is subject to an habitual state of imbecility, insanity or madness shall be allowed to take care of his own person and administer his estate, although such person shall at times appear to have the possession of his reason. And article 422
48 provides that, not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to any infirmity, are incapable of taking care of their persons and administering their estates.

The defendant's infirmity which, the plaintiffs contend, renders him incapable of taking care of himself or his estate is that he has alcoholic insanity and is a victim of the morphine habit. He testified in this case, and the record of his testimony would not, in itself, warrant his interdiction. He says that he desires to be cured of the craving for alcohol and narcotic drugs, and that he intends to be cured and to reform his life. When his physician, from the witness stand, expressed the belief that he could cure the defendant if he could have absolute control of him and his surroundings, the plaintiff's attorneys proposed, in open court, to have the case continued and the trial left open for such time as it might require for the doctor to cure the defendant by eradicating his craving for morphine and alcohol. The defendant's counsel declined the proposition, asserting that, although the defendant was an unfortunate victim of the habit which he had acquired through no moral fault of his, he was not a subject for interdiction. The plaintiffs' counsel then asked the court to continue the case in order to permit the defendant's physician to cure the defendant if he could. The request was refused.

The defendant is now about thirty-seven years of age. He began drinking to excess, as soon as he came to the age of majority, and, several years later, became a morphine habitue. Except during the several intervals in which he was under treatment for his alcoholic insanity and morphine poisoning, and perhaps the two or three years in which he worked, the sixteen years of his manhood have been spent in drunkenness and debauchery. He underwent various treatments in several respectable institutions for alcoholism, without any success whatever, twice in 1901, again in 1903, and in 1905, and 1910; and he underwent the hyoscine treatment for his morphine habit in 1913, and the Lambert treatment for mor-
49 phine twice in the same year. At the end of every treatment for alcoholism or the morphine habit, he immediately resumed the abuse of alcohol and then the morphine habit. During

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these years, he has committed many irrational acts, has been guilty of very eccentric conduct, and has, on several occasions, displayed a dangerous disposition towards those against whom he imagined he had a grievance. He fired both barrels of a shot-gun into the face of his mother's coachman at close range, shooting the man's eye out, without justification and with very slight, if any, provocation. It was for that crime that the grand jury refrained from indicting the defendant on account of his insanity.

The defendant inherited from his father a fortune of about ninety thousand dollars, which he squandered in about two years of debauchery; and, by the will of his mother, he has inherited another fortune of about a hundred and fifteen thousand dollars.

The testimony of the alienists, psychologists, trained nurses, and a few non-experts who have observed the defendant's conduct during the past sixteen years, covers eleven hundred pages of typewritten matter, which need not be reviewed at length in this opinion. Some of the experts express the opinion that the defendant is insane, and others say he is not.

Coming from a family of wealth and refinement and possessed of considerable education, the defendant seems to have some very good attributes—and friends who sympathize with him, excuse his strange conduct, and have faith in his reforming. He has been pampered as if no responsibilities were *were* intended to be imposed upon him. When he upsets all the calculations of the doctors and nurses trying to cure him of the alcohol or narcotic drug habit, by going out to a barroom and taking a drink, the failure of the cure is attributed to the fault of the deputy sheriff in not guarding Mr. Gasquet more closely. No one blames Mr. Gasquet; he is not supposed to have any responsibility for his own ruin or redemption. At times, he fully realizes his affliction and wishes to be cured, but he has acquired the habit of taking narcotic drugs and abusing alcoholic drink to such an extent that he is bereft of self-control.

Act No. 100 of 1890 provides that any person who is an inebriate or habitual drunkard and who, by reason of said infirmity, shall be unable to support himself or his family, shall be liable to be interdicted and shall be placed in the custody and care of a curator who shall have full authority and control of the person of such inebriate, with power to place him in the hospital or other institution for the treatment and cure of his infirmity.

And the Act No. 157 of 1894, making provision for the cure of indigent drunkards or inebriates, at the expense of the parish or municipality in which they reside, defines a drunkard as "any person who has acquired the habit of using spirituous, malt or fermented liquors, cocaine or other narcotics, to such an extent or degree as to deprive him of reasonable self-control."

It is not disputed that the defendant has acquired the habit of using spirituous liquors and narcotic drugs to such an extent as to deprive him of reasonable self-control.

Nor can it be denied that, on account of his infirmity, he has been unable to support himself during the past ten years.

The defendant's learned counsel contend that the Act No. 100 of

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1890 only applies to indigent inebriates or drunkards. They s
that the defendant's inability to support himself is not to be co
sidered, because, with the fortune he squandered and the subsequ
kindness of his relations, he has not had to support himself, an
if history does not repeat itself, with the additional fortune whi
the defendant has recently inherited, he will be well able to su
port himself hereafter.

51 The statute of 1890, however, is not, in terms, restricte
to indigent persons. It provides that any inebriate or habi
ual drunkard who is, by reason of such infirmity, unable to suppo
himself or his family, is liable to interdiction. And, from the r
quirement that the curator of such interdict must furnish bond an
comply with all the formalities and requirements relating to t
qualification of curators of other interdicts, it may be assumed th
the legislature had no intention to provide that only indigent pe
sons should be interdicted for inebriacy or habitual drunkenne
Interdiction is pronounced not only for the welfare of the interdi
but with regard to the safety and welfare of society. In the ca
of interdiction for inebriacy or habitual drunkenness, considerati
for the safety and welfare of society is emphasized by the legislati
definition of a drunkard, as a person who has acquired the alcohol
narcotic drug habit to such an extent as to deprive him of reasonab
self-control.

Under the terms of the statute, it will be within the power an
perhaps will be the duty of the curator who shall be appointed
care for the interdict in this case to place him in a hospital
other institution for the treatment and cure of his infirmity. An
when that is accomplished, there is ample provision in our law f
the repeal and revocation of his interdiction.

The judgment appealed from is affirmed at the cost of the est
of the appellant.

Syllabus.

(1) Although the constitution of this state authorizes the cour
of appeal to issue the writ of habeas corpus at the instance of a pe
son in actual custody, it does not follow that, after issuing th

52 writ, the court may proceed to try and decide a case of whic
it has no jurisdiction.

(2) The court of appeal has not jurisdiction to revoke an ord
rendered by the criminal district court committing to the insan
asylum a person who is charged with a crime and was not indicte
on account of his insanity.

(3) Section 993 of the revised statutes, authorizing the crimin
court to commit to the insane asylum a person who has been a
rested to answer for a crime and has been found not guilty on th
plea of insanity or has been not indicted by the grand jury becau
of insanity, does not violate the article of the constitution conferri
upon the civil district court exclusive original jurisdiction of cui
for interdiction; nor does the commitment, under that section of th
revised statutes, deprive a person of his liberty without due proce
of law.

(4) Not only lunatics and idiots are liable to interdiction, but all persons who, on account of an infirmity, are incapable of taking care of themselves and administering their estates.

(5) A sane person cannot be interdicted for prodigacy, although psychologists and others sometimes call prodigacy moral insanity.

(6) Under the provisions of the Act No. 100 of 1908, in connection with article 422 of the civil code, any person who is such an inebriate or habitual drunkard that he is unable to take care of himself and his estate may be interdicted and put into the custody and care of a curator, who shall have authority to place the interdict into an institution for the treatment and cure of his infirmity.

(7) An inebriate or habitual drunkard is a person who has acquired the habit of drinking intoxicating liquors or taking narcotic drugs to such an extent as to deprive him of reasonable self-control.

53 *Petition for Rehearing.*

Supreme Court of the State of Louisiana.

No. 29794.

Petition for Rehearing, etc., of Fernand Vaughan Guequet, Defendant and Appellant.

J. C. & Thomas Gilmore, Wm. Winans Wall, Attorneys for Defendant, Appellant.

Supreme Court of Louisiana. Filed Feb. 9, 1915. (Signed) Paul E. Mortimer, clerk.

54 To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of Louisiana:

The petition of Fernand Vaughan Guequet, defendant and appellant, respectfully represents:

That, "To interdict is a grave, a responsible task, the most important that a Court can be called upon to perform. Insanity we know is a misfortune, not a dishonor, but it is a misfortune which, in its results, is equal to dishonor; it affects the destinies, blights the hopes of a whole family. The sentence of interdiction, for it is a sentence, when pronounced against a parent, impresses on that parent's name by whomsoever borne, a badge of suspicion which time itself does not, can not, obliterate. Woe to the son or daughter of whom it can be said, they are the children of an interdicted!" Franche vs. His Wife, 29 A. 312.

And before allowing this judgment which binds the future of the defendant irretrievably to become final, the whole Court should be satisfied that Doctors Hamilton P. Jones; Jos. A. O'Hara, Coroner; S. F. Mioton; Geo. S. Bel; Gustave Munn; John P. Dicks; Chas. J. Bloom; Robert M. Blakely; Louis Fortillat; and about twenty reputable trained nurses, the only witnesses belonging to the medical profession who knew defendant's mental and physical condition at

the time of the trial, all of whom testified that defendant was then absolutely sane and suffering no physical or mental disturbances from morphine or alcohol, are all either incompetent to judge or wilfully perjured themselves. For to maintain the judgment heretofore handed down herein you must do one or the other; because not one witness for the plaintiff's professed to have had any observation of the defendant for six months prior to the trial. Besides the opinion heretofore handed down confirms the testimony of defendant's witnesses. At the top of page 7 of the opinion it is said of defendant "He testified in this case and the record of his testimony would not, in itself, warrant his interdiction."

That the opinion and decree pronounced by this Court in this case on Monday, January 25, 1915, are contrary to the law and the evidence and that petitioner, appellant, is injured and aggrieved by said judgment and that a rehearing should be granted herein for the following among other reasons, to-wit:

I.

That the Court erred in not giving to the judgment of the Court of Appeal pronouncing petitioner sane. That the said judgment was rendered subsequent to the judgment of the Civil District Court, and was binding on this Court as to defendant's mental con-
55 dition at the time of its rendition July 7, 1914. The Court of Appeals had jurisdiction to issue the writ of habeas corpus. * * * "The Courts of Appeals, and each of the judges thereof, shall have power to issue the writ of habeas corpus at the instance of any person in actual custody within their respective circuits." Art. 104, Constitution of La. If the Court of Appeals had the power to issue the writ, necessarily it had the power to find the fact of sanity vel non upon which to predicate its judgment, otherwise its power to issue the writ under the facts of this case is mere brutum fulmen.

II.

That the Court erred in declaring that although the Court of Appeals had jurisdiction to issue the writ of habeas corpus it exercised unlimited jurisdiction in this case. The Court of Appeals only found defendant to be sane, an essential fact to be determined on an application for habeas corpus tending the issue of illegal confinement because of alleged insanity. If the Court of Appeals may not inquire into the mental condition of an applicant for habeas corpus when he alleges that he is illegally confined because it is pretended that he is insane, the constitutional guarantee to this writ is withdrawn from defendant in violation of Constitution of the U. S., Art. I. Sec. 9, and the Constitution of La., Arts. 13 and 104.

III.

That this Court erred in holding that the Court of Appeals had no jurisdiction or authority to revoke or set aside the judgment ren-

dered by the Criminal District Court. The power to issue the writ of habeas corpus conferred by the Constitution of La. Art. 104, is full authority for setting aside the judgment when it is found that said judgment was illegally rendered or that the facts upon which it was based no longer exist. A judgment of insanity is a subject of continuing jurisdiction and is only prima facie, always subject to reversal on the showing of recovery to sanity.

IV.

That this Court erred in reviewing the final judgment of the Court of Appeals not before it on appeal or any process of review. That this Court was restricted to the sole question whether or not the judgment on habeas corpus was res adjudicata of defendant's sanity. That all that is said in the opinion of this Court as to the ineffectiveness of the Court of Appeals to set aside the judgment of the Criminal District Court is obiter dicta and should be stricken out or declared to be obiter dicta.

V.

That this Court erred in rejecting the unimpeachable testimony of more than a score of witnesses who had observed the defend-
56 ant over a long period of time preceding the trial who testified that the defendant was a rational sane being and able to take care of his person and administer his estate, and in accepting the testimony of witnesses whose observations were made long prior to the trial and who knew nothing whatever of defendant at the time of the trial.

VI.

That this Court found that "his (defendant's) testimony would not in itself warrant his interdiction," but in spite of this testimony, which is undoubtedly of the greatest weight, and should have been conclusive in this case, it was given no effect. That the Court erred in not giving effect to defendant's testimony.

VII.

That this Court erred in declaring that it is not disputed that defendant has acquired the habit of using spirituous liquors and narcotic drugs to such an extent as to deprive him of reasonable self-control. It is proven that he has not used spirituous liquors habitually since October, 1912, and it is proven that morphine is given to him by a skillful and reputable physician and that defendant never takes it himself and that the amount taken by him can not deprive him of reasonable self-control, and that he is not suffering from any mental disturbances due to morphine or alcohol.

The testimony of Drs. Jones, Mioton and O'Hara shows, that the taking of morphine has little effect on the human intelligence, and these gentlemen base that conclusion on a wide experience in the medical field. Besides, the testimony of the most eminent specialists in the treatment of drug addictions in the world has been

taken in this case—to wit, Dr. George E. Pettey, of Memphis, and Drs. Alexander Lambert and A. R. Tilton, of New York.

Dr. Pettey was asked the following questions:

"8th. Int. Does morphinism incapacitate a man for the practice of medicine, surgery, law, engineering, ministry, teaching or business?

"Ans. to 8th Int. No, but it lessens his efficiency.

"12th Int. Where a morphine addict is able to obtain the drug without difficulty, would the moderate use of morphine incapacitate the average person *for* taking care of his own person and administering his estate?

An. to 11th Int. No, it would not."

Tr., pp. 1015, 1016, 1023.

Dr. Lambert was asked the following questions:

"10th Int. Have you, in your practice, come in contact with morphine addicts, who were eminent in the learned pro-
57 fessions and maintained their positions as leaders, notwithstanding their addiction to the use of morphine?

"Ans. to 10th Int. Yes.

"11th Int. If you answer that you have known of such cases, as referred to in the preceding interrogatory, what quantity of morphine did such persons use daily?

"Ans. to 11th Int. The amount varies with the individual. I have seen professional men, who were still able to do fairly good work, take fifteen or twenty grains a day. I have seen others who for years took less than two grains a day.

"12th Int. Where a morphine addict is able to obtain the drug without difficulty, would the moderate use of morphine incapacitate the average person from taking care of his own person and administering his estate?

"Ans. to 12th Int. No, it would not."

Tr., pp. 1032-1038-1039.

Dr. A. R. Tilton gave the following testimony:

"9th Int. Does morphinism incapacitate a man for the practice of medicine, surgery, engineering, law, ministry, teaching or business?

"Ans. to 9th Int. As a rule, it does not.

"10th Int. Have you, in your practice, come into contact with morphine addicts, who were eminent in the learned professions and maintained their positions as leaders, notwithstanding their addiction to the use of morphine?

"Ans. to 10th int. Yes, many times.

"11th Int. If you answer that you have known of such cases, as referred to in the preceding interrogatory, what quantity of morphine did such persons use daily?

"Ans. to 11th int. On the average between five and ten grains daily. Of course, the amount of morphine taken by the patient varies considerably according to condition.

"12th Int. Where a morphine addict is able to obtain the drug without difficulty, would the moderate use of morphine incapac-

itate the average person *for* taking care of his own person and administering his estate?

"Ans. to 12th Int. I should say it would not."

Tr., pp. 1048-1056.

58 VIII.

That the Court erred in giving effect to Act No. 100 of 1890, providing for the interdiction of habitual drunkards as the said act is restricted to persons who are unable by reason of this infirmity to support themselves or their families, and could not apply to a person having estate. That the second section of said Act providing for the appointment of a curator and giving bond does not necessarily mean that the person interdicted shall be possessed of an estate, but may be construed as a guarantee for the faithful performance of the duties of the curator as to the person of the interdict, and as to subsequently acquired property. It could hardly be said that because a person has no estate he would not be subject to this Act, because the provision about bond of curator presupposes an estate. This would be class legislation repugnant to the Federal and State Constitutions.

IX.

That the Court erred in construing the term inebriate or habitual drunkard to include a person who is given morphine by a skillful and reputable physician and who never indulges in its use except as ordered by his physician. That the terms inebriate and habitual drunkard are synonymous and according to all standard lexicographers mean a person addicted to the use of intoxicating liquors.

The definition of inebriate by Worcester is: Inebriate (VA.) (L. inebrio inebriatus; is used intensively, and ebrio to intoxicate; ebrius, drunk.) 1 to intoxicate, to make drunk.

Inebriate (*n*) A drunkard.

Inebriety, drunkenness, ebriety.

To the same effect is the definition given by Webster.

Black's Law Dictionary defines an inebriate as "A person addicted to the use of intoxicating liquors, an habitual drunkard."

In Commonwealth vs. Whitney 11 Cush. 479, it was said:

"There can be no doubt that drunkenness as it is commonly understood in the community is the result of the excessive drinking of intoxicating liquors. Such is also the signification given to it by the loxicographers. It is ebri-ety, inebriation, intoxication, all words nearly synonymous and all expressive of that state or condition which inevitably follow from taking into the body by swallowing or drinking excessive quantities of such liquors." And in the syllabus of this case the Court says: "Evidence of habitual intoxication from the use of chloroform will not sustain a complaint under the Rev. Sts. C. 143, Sec. 5 charging a person with being a common drunkard." Ib. 11 Cush. 479.

In 22 N. E. 806 it was held "The use of morphine by hypodermic injections is not drunkenness within the meaning of Rev. St. Ill. C.

40, Sec. 1 which makes habitual drunkenness a cause for divorce."

59 That the Act 100 of 1890 of itself exhibits the intention of the Legislature to use the terms inebriate and habitual drunkard interchangeably and as synonymous terms as in the 3d section of said Act it drops the use of the terms habitual drunkard and mentions only inebriate.

X.

That the Court erred in taking from the Act 157 of 1894 the definition therein given of inebriate. That said Act is altogether separate and distinct from Act 100 of 1890 and has no reference thereto, and the definition given of inebriate by said Act is restricted in terms to the Act itself. Besides coming four years later than Act 100 of 1890 the legislature in passing the Act of 1890 could not have had in contemplation the definition given in the Act of 1894, but must have had the ordinary meaning of the term as conveyed by lexicographers. It is not conceivable that a person seeking to be informed of the meaning of the word inebriate would consult Act 157 of 1894. It could not have been done in the time that intervened between the passage of the two acts, and it cannot be argued that the meaning of the word drunkard or inebriate in the Act of 1890 has been changed in any way by Act 157 of 1894, which makes no mention whatever of Act 100 of 1890.

Petitioner respectfully asks that additional time be allowed for the purpose of elaborating the points and authorities herein contained.

Wherefore petitioner prays that rehearing be granted in this case and that the judgment herein rendered and the judgment appealed from be set aside and that judgment be rendered in favor of petitioner Fernand Vaughan Gasquet, and that plaintiff's suit be dismissed at their cost.

(Signed) J. C. & THOS. GILMORE,
(Signed) WM. WINANS WALL,
Attorneys for Defendant and Appellant.

60 (*Motion to Abate and Dismiss or Remand.*)

Supreme Court of the State of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of Fernand Vaughan Gasquet, defendant herein, through J. C. & Thos. Gilmore and Wm. Winans Wall, his attorneys, and on suggesting to the Court that subsequent to the appeal herein from the judgment of the Civil District Court, mover was released from the custody of the Criminal Sheriff of the Parish of Orleans, by whom he was held under commitment from the Crim-

inal District Court for the Parish of Orleans to the ward for the criminal insane of the Asylum for the Insane of the State of Louisiana at Jackson, La., and adjudged sane and responsible by the Court of Appeal for the Parish of Orleans in habeas corpus proceedings inaugurated under Article 104 of the State Constitution; that, thereupon, to-wit, on July 7, 1914, mover left the State of Louisiana permanently, and, after spending several days at Gulfport, proceeded to the City of Memphis, Shelby County, Tennessee, where he arrived on or about the 24th day of July, 1914, for the purpose of making said City of Memphis his place of permanent residence, and has resided in said place continuously since said time and is at present a permanent resident and citizen of the City of Memphis, in the County of Shelby, State of Tennessee; that although mover has never, at any time, been insane, as appears from the testimony in this record, he, on the 19th day of February, 1915, presented a petition to the Probate Court of Shelby County, Tennessee, in which he set forth in detail the various proceedings had with respect to mover in the Criminal District Court for the Parish of Orleans, the Civil District Court for the Parish of Orleans, the Court of Appeal for the Parish of Orleans and this Honorable Court, and averred that he was a citizen of the City of Memphis, County of Shelby, State of Tennessee, and desired to have his mental condition examined
61 into by a jury of twelve freeholders and have his capacity to take care of himself and his property determined by said jury, in accordance with Sections — of the Revised Laws of the State of Tennessee; that said jury of freeholders was ordered impaneled on said petition, in accordance with said sections of the Revised Laws of Tennessee, and did proceed to inquire into the mental condition of mover, and, after due inquiry, found that mover is of sound mind and has sufficient capacity for the government of himself and his property, and, accordingly, rendered their verdict on the 20th day of February, 1915; that the Probate Court of Shelby County, Tennessee, in pursuance of said verdict of said jury of freeholders, rendered judgment declaring mover to be a resident and citizen of the County of Shelby and State of Tennessee, confirming the verdict of said jury and adjudging mover to be a person of sound mind and capable and competent to control himself and his property, and removing any disability of mover by reason of the proceedings against him hereinbefore mentioned, all of which will appear more fully and in detail by reference to transcripts of the entire record in said proceeding, a duly certified and authenticated copy of which, certified to in accordance with the Act of Congress, is annexed hereto as part hereof;

And on further suggesting to the Court that the said verdict of the jury and judgment of the Probate Court of Shelby County, Tennessee, under the first section of the 4th article of the Constitution of the United States, providing that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, is entitled to full faith and credit and is conclusive as to the citizenship and the mental condition of mover and his ability to take care of his person and property at the

present time, and, therefore, these proceedings should be
62 abated and dismissed as having no longer any object, or that these proceedings be remanded to the Civil District Court.

Wherefore, mover prays that these proceedings be abated and dismissed, or that they be remanded to the Civil District Court for the Parish of Orleans with such instructions from this Court as may be necessary in the premises to that end.

(Signed) J. C. & THOS. GILMORE,
" WM. WINANS WALL,
Att'ys.

Endorsed: No. 29,784. Supreme Court of the State of Louisiana. Interdiction of Fernand Vaughan Gasquet. Motion. Filed Mar. 4, 1915.

(Signed) PAUL E. MORTIMER, *Clerk.*

(*Transcript of Record in Probate Court, Shelby County, Tennessee.*)

63 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Honorable J. S. Galloway, Judge:

Your petitioner, Fernand Vaughan Gasquet, would respectfuily show unto the Court that he was formerly a resident of the State of Louisiana and the City of New Orleans; that on or about the 7th day of June, 1912, an indictment in which petitioner was charged with shooting with intent to murder a certain individual, there was returned by the Grand Jury of the Parish of Orleans, Louisiana, "Not a true bill, on account of the insanity of the defendant." Whereupon your petitioner was confined in the asylum for the criminal insane by a judgment of the Criminal District Court of the State of Louisiana, and the City of New Orleans, and was sent to the Touro Infirmary, there located, where your petitioner remained under custody and supervision of the officers until released, as hereinafter stated.

Petitioner would show that on the — day of —— 19—, a proceeding was filed against your petitioner for interdiction in the Civil District Court of New Orleans, Louisiana; that said cause was tried before the Court on the 15th day of June, 1914, the Court holding that your petitioner was subject to interdiction, the judgment of the Court rendered in said cause being as follows:

Div. C. Civil District Court.

No. 106,435.

"Interdiction of FERNAND VAUGHAN GASQUET.

"This cause having been argued and submitted to the Court on the 2nd Inst., and the Court having taken time to consider
64 and being duly advised, and by reason of the law and evidence, being in favor of plaintiffs and against defendant, and for reasons orally assigned.

"It is ordered, adjudged and decreed that there be judgment in favor of the plaintiffs and against defendant, Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of the said defendant.

"Judgment read and rendered in open Court on this 15th day of June, 1914.

"Judgment read and signed in open Court on this 19th day of June, 1914.

(Signed) "E. K. SKINNER, *Judge.*"

Petitioner would further show that an appeal was taken from said judgment, and the same was affirmed by the Supreme Court of the State of Louisiana and is now resting in said court on petition to rehear.

Petitioner would further show that after judgment in the interdiction proceedings was entered against him as above mentioned, in the Civil District Court, he being at the time confined in the Touro Innrmary, as heretofore stated, he, on the — day of ——, 1914, filed a petition in the Court of Appeals in the State of Louisiana and City of New Orleans, for a writ of Habeas Corpus. This writ was directed to the Criminal Sheriff, commanding him to produce petitioner in Court, the petition praying that after such hearing the latter be at once released from custody and restored to his liberty. The Court of Appeals issued the writ, and after hearing the testimony rendered a judgment in the proceeding against the sheriff,
declaring that your petitioner was not insane and that his
65 release would not be dangerous to the community, and ordered him discharged and released from custody.

In accordance with said judgment your petitioner was released, whereupon he immediately left the State of Louisiana and came to the City of Memphis, in Shelby County, Tennessee, reaching here on or about the 24th day of July, 1914, making said city of Memphis his place of residence, and has resided in said place continuously since said time and is at present a permanent resident and citizen of the city of Memphis and the County of Shelby and State of Tennessee. The Supreme Court of Louisiana, in its decision affirming the judgment of the interdiction hereinabove referred to, denied the jurisdiction of the Court of Appeals to grant the writ of Habeas Corpus upon which your petitioner was released; said Habeas Corpus proceeding, as your petitioner is advised, was not before the Supreme Court by appeal or review or other procedure for review and your petitioner is not advised how said Supreme Court could annul or set aside the proceeding of the Court of Appeals, in regard to said Habeas Corpus proceeding; but nevertheless your petitioner would respectfully show to the Court that he is now and was at and before the time the Habeas Corpus proceedings were instituted, and has continued ever since to be, a person of sound mind and fully capable of exercising control over himself and his property, and does not admit that he was ever otherwise.

Petitioner would further show to the Court that he is possessed of considerable estate, which is now being withheld from him, and an attempt is being made through the courts of Louisiana to appoint a curator for the purpose of taking charge of and administering petitioner's estate.

Your petitioner would show that in view of the question made as to his sanity, he has, since his arrival in Memphis, placed and kept himself constantly under the supervision and inspection of
66 eminent specialists in nervous diseases, but has not taken any treatment for any mental trouble, none being deemed necessary by these physicians. Petitioner presents herewith written certificates of two reputable physicians, well known practitioners in the City of Memphis, that he is of sound mind. Said certificates being made Exhibits "A" and "B" hereto.

Premises considered, your petitioner prays that the Court shall order the sheriff forthwith to summon a jury of twelve free-holders or house-holders, to ascertain by inquisition the condition of petitioner's mind and make return thereof to the Court at its present term, and that upon such return the Court make all proper orders and grant all proper relief as may be warranted by law and the finding of said jury.

(Signed) McGehee, Livingston & Farabaugh,
Attorneys for Petitioner.

State of Tennessee,
County of Shelby:

Fernand Vaughan Gasquet, the petitioner in the above styled cause, makes oath that the statements in said petition, made as of his own knowledge are true, and those made on information and belief he believes to be true.

(Signed) FERNAND VAUGHAN GASQUET.

Subscribed and sworn to before me this February 19, 1915.

(Signed) FRED S. TOOMBS,
[NOTARIAL SEAL.] *Notary Public.*

67 Exhibit "A."

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of Fernand Vaughan Gasquet.

Certificate of Dr. Wm. G. Somerville.

To the Honorable J. S. Galloway, Judge:

I, Wm. G. Somerville, do hereby certify that I am a regularly licensed and practicing physician in the City of Memphis, County of Shelby and State of Tennessee, and as such physician have been practicing in said state *of* four years. I further certify that I am acquainted with Ferdnand Vaughan Gasquet and have had occasion

to see him frequently since August 1, 1914. I further certify that the said Gasquet is a person of sound mind.

(Signed) WM. G. SOMERVILLE.

Subscribed and sworn to before me this the 19th day of February, 1915.

(Signed) FRED. S. TOOMBS,
[NOTARIAL SEAL.] *Notary Public.*

68 EXHIBIT "B."

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

Certificate of Dr. George E. Petty.

To the Honorable J. S. Galloway, Judge:

I, George E. Petty, do hereby certify that I am a regularly licensed and practicing physician in the City of Memphis, County of Shelby and State of Tennessee, and that as such physician I have been practicing in the city of Memphis for the past fifteen years. I further certify that I am acquainted with Fernand Vaughan Gasquet, have known him since about the first of August, 1914, and have had occasion to see him every few days since that time. I further certify that the said Gasquet is a person of sound mind.

This the 19th day of February, 1915.

(Signed) GEO. E. PETTY.

Sworn to and subscribed before me, this the 19 day of Feb'y, 1915.

(Signed) FRED S. TOOMBS,
[NOTARIAL SEAL.] *Notary Public.*

69 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Clerk of the County Court of Shelby County, Tennessee:

Upon the petition in the above styled cause giving bond for costs with good security in the sum of $250.00, you will issue writ to the sheriff of this County, as prayed for in this petition and in accordance with the law as provided.

(Signed) J. S. GALLOWAY, *Judge.*

Cost Bond.

We, Fernand V. Gasquet, as principal and M. S. McGhee, as surety, acknowledge ourselves indebted to State of Tennessee in

the sum of Two hundred & fifty Dollars. To be void if the said Fernand V. Gasquet, complainant in a petition which has this day been filed in the Probate Court of Shelby County, against the said —— —— shall pay all such costs as may be awarded against him by the Court in its decrees and orders in said Bill.

This 20 day of Feb'y, 1915.

(Signed) FERNAND V. GASQUET. [SEAL.]
(Signed) M. S. McGHEE, *Surety.* [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]

Sureties, Sworn and justified before me, and by me approved.

(Sgd.) JNO. C. M. LEMORE, *Clerk.*
(Sgd.) E. B. CRENSHAW, D. C.

70 (Endorsed on reverse:) In the Probate Court. No. — R. D. In re Petition of (Cost Bond) Fernand V. Gasquet.—Filed 20 day of Feb'y 1915.—(Signed) Jno. C. M. Lemore, Clerk.

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Sheriff of Shelby County, Greeting:

You are hereby commanded to inquire, by the oath of twelve freeholders, or householders, summoned by yourself, whether Fernand Vaughan Gasquet, of Memphis, in the County of Shelby, is a lunatic or person of unsound mind, so that he has not capacity sufficient for the government of himself and his property. And you are further commanded that, at certain days and places appointed by yourself, you will diligently make application in the premises; and the same, distinctly and plainly made, return to the County Court of said County at its present term, together with the writ.

Witness Jno. C. M. Lemore, Clerk of said Court, at office, the 20 day of February, 1915.

(Signed) JNO. C. M. LEMORE, *Cl'k.*
" E. B. CRENSHAW, *D. C.*

(Endorsed on Reverse:) Came to hand 2/20/18 and executed by Summons the following named persons for Jury in the matter of petition of Fernand Vaughan Gasquet:—C. H. Cole, C. M. Berry, J. W. McNally, A. T. Walker, A. H. Cohn, Frank Noratski, B. F. Young, Jno. Dolan, S. E. Yates, Oscar Klucke, Jas. Degman, G. W. Barnett. 2/20/15—and their verdict return herewith. (Signed) J. A. Ruchman, Sh'ff, by Wm. Rogers, D. C.

71 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

STATE OF TENNESSEE,
County of Shelby:

The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand Vaughan Gasquet is a lunatic or person of unsound mind so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

As Witness our hands this the 20 day of February, 1915.

(Signed) C. H. COLE, *Foreman.*
" A. H. COHN.
" C. M. BERRY.
" A. T. WALKER.
" FRANK NORITSKI.
" J. W. McNALLY.
" O. R. KLEUKE.
" G. W. BARNETT.
" JNO. J. DOLAN.
" B. F. YOUNG.
" S. E. YATES.
" JAS. DEGMAN.

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

This cause was this day heard upon the whole record, including especially the petition of Fernand Vaughan Gasquet filed herein February 20, 1915, making application for a jury of twelve
72 freeholders or householders to ascertain by inquisition the condition of mind of the said Fernand Vaughan Gasquet, and praying that the Court make all proper orders and grant all proper relief in the premises as warranted by law and the finding of said jury; the fiat of the Honorable J. S. Galloway, Judge, directing the issuance to the sheriff of writ of inquisition as prayed in said petition and in acordance with law; the said writ of inquisition issued to the sheriff directing that he summon said jury, together with the return of the sheriff upon said writ; the testimony of witnesses introduced and examined before said jury; and the verdict duly signed by said jurors, all householders or freeholders of Shelby County, Tennessee, which verdict is in words and figures as follows, to-wit:

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

STATE OF TENNESSEE,
County of Shelby:

The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand Vaughan Gasquet is a lunatic or person of unsound mind so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

As witness our hands this the 20th day of February, 1915.

C. H. COLE, *Foreman.*
A. H. COHEN.
C. M. BERRY.
A. T. WALKER.
FRANK NOVITZKI.
J. W. McNALLY.
O. N. KLENKE.
G. W. BARNETT.
73 JNO. J. DOLAN.
B. F. YOUNG.
S. E. YATES.
JAS. DEGNAN.

And it appearing to the Court that the petitioner, Fernand Vaughan Gasquet, is and has been since about July 24, 1914, a resident and citizen of the County of Shelby and State of Tennessee, having removed his domicile to said State and County on or about said date from the Parish of Orleans and State of Louisiana, where he formerly resided; and that, while a resident of said Parish of Orleans and State of Louisiana, by proceedings brought in the Civil District Court at New Orleans, Louisiana, he was adjudged incapable of taking care of his person and administering his estate and was therefore interdicted, and that previous thereto he was adjudged mentally unsound by the Criminal District Court of the State of Louisiana, in the City of New Orleans, but that the said petitioner for some time before July 24, 1914, was and has ever since continued to be of sound mind and of sufficient capacity for the government of himself and his property, and that the verdict of the jury as hereinbefore set forth is in proper form and warranted by the evidence, it is all so ordered, adjudged and decreed by the Court.

It is therefore ordered, adjudged and decreed that said verdict of the jury be and the same is hereby confirmed; and it is further adjudged, decreed and declared by the Court that said Fernand Vaughan Gasquet is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to settlement from any and all persons having control, charge or

management of any part of his estate, real or personal, any disability of the said Gaspart by reason of the proceedings against him heretofore mentioned being hereby removed.

74 STATE OF TENNESSEE,
Shelby County, ss:

I, Jno. C. W. Lennon, Clerk of the County and Probate Courts of said County, do hereby certify that the foregoing thirteen pages contain a full, true and perfect copy of the whole record in the matter of the petition of Fernand Vaughan Gaspart, as the same appears of record now on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, at office, in the city of Memphis, this 22nd day of Feb'y 1915.

(Signed) JNO. C. W. LENNON, Clerk.
[SEAL.] By ——— ———, D. C.

STATE OF TENNESSEE,
Shelby County:

PROBATE COURT ROOM,
MEMPHIS, TENN., Feb'y 22, 1915.

I, J. S. Galloway, sole and presiding Judge of the Probate Court of said County, certify that Jno. C. W. Lennon, who gave the foregoing certificate, is now, and was at the time of signing the same, Clerk of said Court, and that said Court is a Court of Record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand, this 22 day of Feb'y 1915.

(Signed) J. S. GALLOWAY, Judge.

STATE OF TENNESSEE,
Shelby County:

I, Jno. C. W. Lennon, Clerk of the Probate Court of said County, certify that Hon. J. S. Galloway, whose genuine official signature appears to the above and hereto annexed Certificate, is and was at the time of signing the same, sole and presiding Judge of the Probate Court in and for the County and State aforesaid, duly commissioned and qualified, and that all his official acts, as such, are entitled to full faith and credit.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the city of Memphis, this 22 day of Feb'y 1915.

(Signed) JNO. C. W. LENNON, Clerk.
[SEAL.] By ——— ———, D. C.

(Endorsed on reverse:) ——— ——— S. D. In the Probate Court of Shelby County. *Transcript of the record in the Matter of the Petition of Fernand Vaughan Gaspart.*—Filed 8th day of Mar. 1915.—(Signed) Paul K. Hartman, Clerk.—Malone, Livingston & Fitzhugh, Solicitors for Respondent.

7—116

76 (*Rehearing Refused.*)

(Extract from Minutes.)

NEW ORLEANS, Monday, March 22nd, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

By the Court:

It is ordered that the rehearing applied for in this case be Refused.

His Honor, the Chief Justice, dissents, being of opinion the rehearing should be granted.

(*Motion to Abate and Dismiss Proceedings Denied.*)

(Extracts from Minutes.)

NEW ORLEANS, Monday, March 22nd, 1915.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

(On motion to abate and dismiss proceedings.)

Denied.

77 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing 76 pages, contain certain proceedings had in the Civil District Court for the parish of Orleans in the suit entitled Interdiction of Fernand Vaughan Gasquet; and, also, certain proceedings had in this the Supreme Court of the State of Louisiana, as per præcipe to be found at page 1, of this transcript, on the appeal taken by said Fernand Vaughan

Gasquet from the Civil District Court to the Supreme Court of the State of Louisiana, and which appeal is now on the files of this, the Supreme Court, under the number 20,784.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at the city of New Orleans, this the 16th day of April, Anno Domini, one thousand, nine hundred and fifteen, and of the Independence of the United States of America, the one hundred and thirty-ninth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

78 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 16th day of April, Anno Domini, one thousand, nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice, Supreme Court of Louisiana.

79 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof, I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 16th day of April, Anno Domini, one thousand, nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk, Supreme Court of Louisiana.

80 (*Original Petition for Writ of Error.*)

Supreme Court of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

To the Honorable the Supreme Court of Louisiana:

The petition of Fernand Vaughan Gasquet, defendant and appellant herein, respectfully represents:

First. That in this cause there is drawn in question the validity of the judicial proceeding of another State, and full faith and credit has not been given by this Honorable Court to said judicial proceeding, and the rights therein adjudicated to petitioner have been denied him, in violation of Section 1 of Article 4 of the Constitution of the United States.

Second. That in a habeas corpus proceeding, legally and properly tried by the Court of Appeal for the Parish of Orleans, in accordance with Article 104 of the Constitution of the State of Louisiana, subsequent to the judgment of interdiction rendered by the Civil District Court in this case, said Court of Appeal for the Parish of Orleans adjudged petitioner to be sane, and this Court, without having said judgment of the Court of Appeal for the Parish of Orleans before it, by writ of certiorari or review, in accordance with Article 101 of the Constitution of Louisiana, being the only method by which the Supreme Court of Louisiana is authorized to review judgments of the said Court of Appeal for the Parish of Orleans, has reversed, nullified and set aside said judgment of the Court of Appeal for the Parish of Orleans, and has thereby deprived petitioner of his liberty, status in society and vested rights, without due process of law and equal protection of the law, in violation of the 5th and 14th Amendments of the Constitution of the United States.

Third. That the effect of the reversal and annulment of the said judgment of the Court of Appeal for the Parish of Orleans is
81 to suspend the writ of habeas corpus guaranteed to citizens of the United States, under Article 1, Section 9, of the Constitution of the United States.

Fourth. That petitioner has exhausted all of his remedies to have the judgment of the Supreme Court of Louisiana corrected, without avail, and desires to have the judgment of said Court reviewed by the Supreme Court of the United States on Writ of Error.

Wherefore, petitioner prays that this Court may be pleased to grant him a Writ of Error, with supersedeas, to the Supreme Court of the United States, on his executing a bond in such sum as the Court may fix, returnable to said Court, at Washington, according to law.

J. C. & THOS. GILMORE,
WM. WINANS WALL,
Attorneys.

Affidavit.

Personally came and appeared before me, the undersigned authority, Wm. Winans Wall, of age and a resident of this Parish and State, who being first by me duly sworn, deposes and says: that he is one of the attorneys for Fernand Vaughan Gasquet, petitioner in the above and foregoing petition; that the said Fernand Vaughan Gasquet is absent from the State of Louisiana; and that all the facts and allegations contained in the above and foregoing petition are true and correct.

WM. WINANS WALL.

Sworn to and subscribed before me at New Orleans, La., this 30th day of March, 1915.

[Seal Supreme Court of the State of Louisiana.]

CHARLES SCHNEIDAN,
Notary Public.

82 *Order.*

Let a Writ of Error issue as herein prayed for, returnable according to law, upon the plaintiff in error furnishing bond conditioned according to law, in the sum of not less than fifteen hundred ($1,500) dollars.

Done and Signed officially in chambers this 30th day of March, 1915, at New Orleans, La.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of Louisiana.

[Endorsed:] No. 20784. Supreme Court of Louisiana. Interdiction of Fernand Vaughan Gasquet. Petition. J. C. & Thos. Gilmore, Wm. Winans Wall, Attorneys. Filed Mar. 30, 1915. Paul E. Mortimer, Clerk.

83 (*Original Assignment of Errors.*)

Supreme Court of Louisiana.

No. 20784.

Interdiction of FERNAND VAUGHAN GASQUET.

Assignment of Errors.

To the Honorable the Supreme Court of Louisiana:

Now, into Court, comes Fernand Vaughan Gasquet, defendant and plaintiff in error, by J. C. & Thos. Gilmore and Wm. Winans Wall, his attorneys, and says:

That in the record, proceedings and decree, in the above entitled matter, there is manifest error in this, to-wit:

First. That the Court erred in refusing to give effect to the judicial proceedings had in the Probate Court of the City of Memphis, County of Shelby, State of Tennessee, which court was possessed of full jurisdiction of the subject-matter of said proceedings, and in refusing to order this suit abated, or the case remanded to the Civil District Court of the Parish of Orleans with instructions to that end, and that to deny full faith and credit to said judicial proceedings is a violation of the express provisions of Section 1 of Article 4 of the Constitution of the United States.

Second. That the Court erred in reversing and setting aside the judgment of the Court of Appeal for the Parish of Orleans rendered in a habeas corpus proceeding, legally and properly tried by the said Court of Appeal for the Parish of Orleans, in accordance with Article 104 of the Constitution of the State of Louisiana, subsequent to the judgment of interdiction rendered by the Civil District Court in this case said Court of Appeal for the Parish of Orleans having adjudged petitioner to be sane, and this Court, without having said judgment of the Court of Appeal for the Parish of Orleans before it, by a writ of certiorari, or review, in accordance with Article 101 of the Constitution of Louisiana, being the only
84 method by which the Supreme Court of Louisiana is authorized to review the judgment of the said Court of Appeal for the Parish of Orleans, has thereby deprived petitioner of his liberty, status in society and vested rights, without due process of law and equal protection of the law, in violation of the 5th and 14th Amendments of the Constitution of the United States.

Third. That the Court erred in declining to give effect to the judgment of the Court of Appeal for the Parish of Orleans on the habeas corpus proceedings aforesaid, and the effect of the judgment of this Court, reversing and setting aside the judgment of the Court of Appeal for the Parish of Orleans, is to suspend the privilege of the writ of habeas corpus guaranteed under Section 9 of Article 1 of the Constitution of the United States.

Fourth. That the decision of the said Supreme Court of Louisiana denies all and singular the aforementioned rights guaranteed by the Constitution of the United States; that the Supreme Court of Louisiana is the highest court of that State; that everything possible has been done to have the said Court correct and rectify the errors herein set forth, without avail; that the decision of said Court is now absolutely final, except insofar as the same is subject to review by the Supreme Court of the United States.

Wherefore, the Said Fernand Vaughan Gasquet, defendant and plaintiff in error, prays that the judgment or decree of the said Court rendered in this cause be annulled, avoided and reversed, with costs, and for costs and general relief.

J. C. & THOS. GILMORE,
WM. WINANS WALL,
Attorneys.

85 *Affidavit.*

Personally came and appeared before me, the undersigned authority, Wm. Winans Wall, who being first by me duly sworn, deposes and says: that he is one of the attorneys for Fernand Vaughan Gasquet; that the said Fernand Vaughan Gasquet is absent from the State of Louisiana; and that all the facts set forth in the above and foregoing Assignment of Errors are true and correct.

WM. WINANS WALL.

Sworn to and subscribed before me at New Orleans, La., this 30th day of March, 1915.

[Seal Charles Schneidan, Notary Public, State of Louisiana.]

CHARLES SCHNEIDAN,
Notary Public.

[Endorsed:] No. 20784. Supreme Court of Louisiana. Interdiction of Fernand Vaughan Gasquet. Assignment of Errors. Filed Mar. 30, 1915. Paul E. Mortimer, Clerk. J. C. & Thos. Gilmore, Wm. Winans Wall, Attorney.

86 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George F. Lapeyre and J. Martial Lapeyre versus Fernand Vaughan Gasquet entitled Interdiction of Fernand Vaughan Gasquet No. 20,784 of the Docket of said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and
87 the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Fernand Vaughan Gasquet as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and

openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 30th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

[Seal Supreme Court of the State of Louisiana.]

Allowed by
FRANK A. MONROE,
Chief Justice, Supreme Court of Louisiana.

[Endorsed:] No. 20784. Fernand Vaughan Gasquet, Plaintiff in Error, versus George F. Lapeyre and J. Martial Lapeyre, Defendants in Error. Writ of Error. Filed Mar. 30, 1915. Paul E. Mortimer, Clerk.

88 *Copy of Bond for Writ of Error.*

Know all men by these presents that we, Fernand Vaughan Gasquet, as prinicpal, and Wm. Winans Wall, as surety, are held and firmly bound unto George F. Lapeyre and J. Martial Lapeyre in the full and just sum of fifteen hundred dollars ($1500.00) to be paid to the said George F. Lapeyre and J. Martial Lapeyre, their heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord, one thousand nine hundred and fifteen.

Whereas, lately, at a hearing and decision in the Supreme Court of Louisiana, in a suit depending in said court between said George F. Lapeyre and J. Martial Lapeyre, as plaintiffs and appellees, and Fernand Vaughan Gasquet, defendant and appellant, a judgment was rendered against the said Fernand Vaughan Gasquet, and the said Fernand Vaughan Gasquet having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said George F. Lapeyre and J. Martial Lapeyre, citing and admonishing them to be and appear before the United States Supreme Court

to be holden at Washington within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said Fernand Vaughan Gasquet shall prosecute his (appeal) writ of error to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) FERNAND VAUGHAN GASQUET,
By THOMAS GILMORE, *His Attorney.*
WILLIAM WINANS WALL.

Signed, sealed and delivered in the presence of:
(Signed) JOHN A. KLOTZ.
[SEAL.] PERCY JOS. HEINES.

Approved by
(Signed) FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

89 UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Personally appeared, Wm. Winans Wall, who being duly sworn, deposes and says: that he is surety on the within bond; that he resides in the city of New Orleans, and is worth the full sum of Five Thousand Dollars ($5,000.00) over and above all his debts and liabilities and property exempt from execution.

(Signed) WM. WINANS WALL.

Subscribed and sworn to before me this 30th day of March, 1915, at New Orleans, La.

(Signed) GEORGE J. UNTEREINER,
[SEAL.] *Notary Pub.*

(Endorsed:) No. 20784. Supreme Court of Louisiana. Fernand Vaughan Gasquet, plaintiff-in-error vs. George F. Lapeyre and J. Martial Lapeyre, defendants-in-error. (Bond.) Filed Mar. 30th, 1915. (Signed) Paul E. Mortimer, Clerk.

90 *Certificate of Lodgment.*

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that, there was lodged with me as such clerk on March 30th, 1915, in the matter of Fernand Vaughan Gasquet, plaintiff-in-error versus George F. Lapeyre and J. Martial Lapeyre, defendants-in-error:

1st. The petition for the writ of error, the original of which is herein set forth.

2nd. The assignment of error, the original of which is herein set forth.

3rd. The bond for the writ of error, a copy of which is herein set forth.

4th. The writ of error, the original of which is herein set forth.

5th. Three copies of the writ of error, one for each of the defendants, and one to file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of this Court, at the City of New Orleans, this the 16th day of April, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

91 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to George F. Lapeyre, Esq., 3924 St. Charles Avenue, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Fernand Vaughan Gasquet is plaintiff-in-error and George F. Lapeyre and J. Martial Lapeyre are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Fernand Vaughan Gasquet as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank A. Monroe, Chief Justice of the Supreme Court of United States, this 30th day of March in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. Supreme Court of the State of Louisiana. No. 20784. Fernand Vaughan Gasquet, Plaintiff-in-error, vs. George F. Lapeyre and J. Martial Lapeyre, defendants-in-error. Citation. Filed Ap'l 6, 1915. Paul E. Mortimer, Clerk.

Received Wednesday the 31st day of March, 1915, and on the 31st day of March, 1915, I served a copy of the within citation of appeal and accompanying writ of error on George F. Lapeyre, defendant in error in person, in the City of New Orleans, Parish of Orleans, State of Louisiana.

Returned same day.

LOUIS PILLOT,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Louis Pillot, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn deposes and says that he made a personal service of the Citation of Appeal and accompanying writ of error on George F. Lapeyre as stated in the above return.

LOUIS PILLOT, *D. S.*

Sworn to and subscribed before me at the City of New Orleans, this 6th day of Ap'l, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Sup. Court of Louisiana.

92 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to J. Martial Lapeyre, Esq., 1725 Esplanade Avenue, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Fernand Vaughan Gasquet is plaintiff-in-error and George F. Lapeyre and J. Martial Lapeyre are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Fernand Vaughan Gasquet as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frank A. Monroe, Chief Justice of the Supreme Court of United States, this 30th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. Supreme Court of the State of Louisiana. No. 20,784. Fernand Vaughan Gasquet, Plaintiff-in-error, vs. George F. Lapeyre and J. Martial Lapeyre, defendants-in-error. Citation. Filed Ap'l 6, 1915. Paul E. Mortimer, Clerk.

Received Wednesday the 31st day of March, 1915, and on the 31st day of March, 1915, I served a copy of the within Citation of Appeal and accompanying writ of error on J. Martial Lapeyre, defendant in error in person in the city of New Orleans, Parish of Orleans, State of Louisiana.

Returned same day.

LOUIS PILLOT,
Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

Louis Pillot, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn deposes and says that he made a personal service of the within Citation of Appeal and accompanying writ of error on J. Martial Lapeyre as stated in the above return.

LOUIS PILLOT, *D. S.*

Sworn to and subscribed before me at the City of New Orleans, this 6th day of Ap'l, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

93 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

Return to Writ.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, as per præcipe to be found at page 1.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Supreme Court of the State of Louisiana, this 16th of April, 1915.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 24,688. Louisiana Supreme Court Term No. 116. Fernand Vaughan Gasquet, plaintiff in error, vs. George F. Lapeyre and J. Martial Lapeyre. Filed April 26th 1915. File No. 24,688.

Supreme Court of the United States

No. 116.

October Term, 1916.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE,
Defendants in Error.

Brief on Behalf of Defendants in Error in Opposition to the Motion of Plaintiff in Error to Advance and Consolidate with this Case, the Case of Fernand Vaughan Gasquet, Appellant, v. Charles Payne Fenner, Testamentary Executor, et als, Appellees, No. 656 of the Docket, October Term, 1916.

May It Please The Court:

The motion under consideration should properly have been made, it seems to us, in No. 656, the case which it is desired to advance and consolidate with this case.

The record in No. 656 has not yet been printed, and this case has not yet been called.

The plaintiff in error in this case is the same person who is appellant in No. 656, but the defendants in error in this case, and appellees in No. 656 are different persons.

A motion to dismiss or affirm this case has been made by defendants in error and is to be presented to this Court on Monday, November 6, 1916, notice having been served on counsel for plaintiff in error on Saturday, October 14, 1916, as will appear from the said motion and affidavit of service on file in this Court.

The motion to dismiss is based upon the absence of any Federal questions to support jurisdiction, and the motion to affirm on their unsubstantiality, if jurisdicton be held to exist.

The plaintiff in error in this case was interdicted by judgment of the Cvil District Court of the Parish of Orleans (R. pp. 8 and 9); this judgment was affirmed by the Supreme Court of Louisiana on January 25, 1915 (R., pp. 30 and 31); on February 8, 1915, Gasquet applied for a rehearing and thereafter, on February 19, 1915, filed an ex parte proceeding in the Probate Court of Shelby County, Tennessee (of which State he claimed to have become a resident since the judgment of interdiction of the Civil District Court) asking that his sanity be investgated and passed upon, and judgment was rendered by the Shelby County Court adjudging him sane (R. p. 41). Gasquet then filed a certified copy of these proceedings in the Supreme Court of Louisiana on March 4, 1915, while his application for a rehearing was under consideration, and,

invoking the full faith and credit clause of the Federal Constitution in support of the judgment of the Tennessee Court, moved to abate and dismiss or remand the proceeding pending in the Supreme Court of Louisiana. This motion was "denied" without comment, and without passing on the Federal question (R. p. 50).

Gasquet sued out a writ of error to the Supreme Court of Louisiana, and brought the case (this case) to this Court.

Some time thereafter, Gasquet brought suit in the United States District Court for the Eastern District of Louisiana against Fenner, the executor of his mother's estate, and his two sisters, his only co-heirs, all residents of Louisiana. He claimed to be a citizen of Tennessee and to be **sui juris** by virtue of the above recited judgment of the Court of Shelby County, Tennessee, for which he invoked the full faith and credit clause of the Federal Constitution, and asked for a partition of his mother's estate, an accounting from the executor, a settlement of accounts with his co-heirs and delivery to him of his share.

The defendants contested his citizenship of Tennessee, and the jurisdiction of the Court on that ground, on the ground of his interdiction, and also because the executor was an officer of the State Court, the estate under administration in the Probate Court, the executor accountable to the Court of his appointment alone, the impossibility, under the laws of Louisiana, of the executor's delivering the property in his possession, and obtaining his discharge from the Probate Court except in a contradictory proceeding therein with all of the heirs including Gas-

quet who, as an interdict, could not stand in judgment. The defendants claimed that possession of all of the property of Gasquet's mother was vested in the executor by the laws of Louisiana and by the terms of the decedent's will, that the executor being an officer of the Probate Court his possession was the possession of the Probate Court which could not be disturbed by the Federal Court, and averred the impossibility of appointing a curator or guardian to Gasquet who could stand in judgment for Gasquet in the settlement of the estate, because the writ of error to this Court had stayed further proceedings in execution of the judgment of interdiction. The United States District Court held it was without jurisdiction to entertain a suit of that character against the executor and Gasquet's co-heirs, even conceding Gasquet's citizenship of Tennessee.

Gasquet then appealed this last case which bears the number 656 of the docket of this Court for this October term, and it is this case, No. 656, which he asks to consolidate and advance to be tried with the present case bearing the number 116.

It is manifest that this motion cannot be entertained because of the pendency of the motion to dismiss or affirm, and because it is possible to decide this case without disposing of any of the questions in No. 656, and also because even if successful in this case, the other questions at issue in No. 656 would have to be passed upon, for No. 656 involved not only his status as an interdict, but also the jurisdiction of the United States District Court to entertain a suit of like character brought by a citizen of Tennessee not under interdiction.

To state our contention more clearly: the theory of Gasquet's motion to advance and consolidate No. 656 with this case, is that in both cases he has set up the judgment of the Shelby County, Tennessee, Court, and invoked the full faith and credit clause of the Constitution, and that both cases, therefore, present an identical question which he assumes to be the controlling question in both cases.

We answer that in this case the validity of the decision of the Supreme Court of Louisiana is not dependent upon the validity or invalidity of the Tennessee judgment; that the Supreme Court of Louisiana paid no attention to the Tennessee judgment, and did not even refer to it in its opinion and decree, but decided the case on Louisiana law, and on the facts. We also answer that the asserted Federal question having been raised in the Supreme Court of Louisiana only after it had rendered its judgment was raised too late and not having been considered or passed upon by the Supreme Court of Louisiana is not an issue in the case, and cannot be entertained by this Court.

We answer further, that the case in the United States District Court on appeal here as No. 656, involves not only the validity and effect of the Tennessee judgment, but also the jurisdiction of that Court on other grounds entirely independent of the Tennessee judgment.

We submit, therefore, that the motion to advance and consolidate asks this Court to hear and determine at the same time two cases involving different questions which cannot be properly considered at the same time, and the motion does not show special and peculiar circum-

stances, as required by Paragraph 7 of Rule 26 of this Court, and we respectfully pray that the motion be refused. **Poindexter v. Greenhow, 109 U. S., 63, 64.**

GEORGE DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE,

For Defendants in Error, George F. Lapeyre and J. Martial Lapeyre.

SUPREME COURT, U. S.
FILED
OCT 23 1916
JAMES D. MAHER
CLERK

No. 116.

Supreme Court of the United States

OCTOBER TERM, 1916.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE,
Defendants in Error.

MOTION TO CONSOLIDATE.

HAUSER PRINTING CO., "The Legal Printers," 720 Poydras St., N. O., La.

J. C. Gilmore
Edward N. Pugh
Thos. Gilmore
Wm Winans Wall
Counsel for Plaintiff

No. 116.

Supreme Court of the United States

OCTOBER TERM, 1916.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE,
Defendants in Error.

MOTION TO CONSOLIDATE.

On motion of Fernand Vaughan Gasquet, plaintiff in error, through his attorneys, J. C. and Thos. Gilmore and Wm. Winans Wall, and on suggesting to the Court that a judgment was rendered in the Civil District Court, Parish of Orleans, State of Louisiana, interdicting mover; that he appealed to the Supreme Court of Louisiana; that while that appeal was pending in the Supreme Court of Louisiana he removed to the State of Tennessee, and became a

citizen of the State of Tennessee, and, under the laws of Tennessee, was pronounced sane and fully capable of managing his own estate and exercising all of the other rights and privileges of a citizen sui juris of that State by the verdict of a jury and judgment of the Probate Court of Shelby County, Tennessee; that, thereafter, plaintiff in error filed a certified copy of the record of the proceedings and judgment had in the Probate Court of Shelby County, Tennessee, in the Supreme Court of Louisiana in the interdiction proceedings then pending therein on appeal, and asked that the said proceedings be declared abated, or that the cause be remanded in order that full faith and credit might be given to said proceedings and judgment had in the Probate Court of Shelby County, Tennessee, which was refused, and thereupon this case was brought to this Court by a writ of error;

And on further suggesting to the Court that after never was adjudged by the Probate Court of Shelby County, Tennessee, to be a citizen of Tennessee, sane and capable of managing his property, by reason of said proceedings and judgment of the Probate Court of Shelby County, Tennessee, and the guarantee embodied in Sections 1 and 2 of Article 4 of the Constitution of the United States, brought suit in the United States District Court for the Eastern District of Louisiana, New Orleans Division, to obtain possession of his property in the State of Louisiana and an accounting from the executor of his mother's succession, in whose hands said property was held, and a partition of said succession among the heirs; that this case was decided adversely to never, who thereupon appealed to this Court, which case is docketed in this court as case of Vernon Vaughan Gaspard vs. Charles Payne Fenner, Administrator

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE and J. MARTIAL LAPEYRE,
Defendants in Error.

Writ of Error to Supreme Court of Louisiana.

On Motion of Defendants in Error to Dismiss or Affirm.

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANTS IN ERROR, IN REPLY TO BRIEF OF PLAINTIFF IN ERROR.

We have this day (November 7, 1916), been served with a copy of the brief of plaintiff in error.

The brief makes it plain that no Federal questions are involved in the case. No attempt is made to answer our arguments and citation of decisions in favor of our motion to dismiss for want of jurisdiction, or to affirm. The errors charged against the judgment of the Supreme Court of Louisiana involve no Federal questions—only matters exclusively within the jurisdiction and discretion of that Court.

We only find it necessary to refer to the following statements made on page 2 of the brief of plaintiff in error, viz.:

> "In the very nature of the case, it was imperative for the Supreme Court of Louisiana to receive the evidence of Gasquet's return to competency, or to remand the case to the trial Court. * * * The Civil Code of Louisiana, Article 396, expressly recognizes the power of the Supreme Court to receive original evidence in interdiction proceedings."

Article 396 of the Civil Code of Louisiana has not been in force in Louisiana since the adoption of the Constitution of 1845, Article 63 of which gave it appellate jurisdiction only, and was repeated in the subsequent Constitutions of 1852, 1864, 1868, 1879, 1898 and 1913.

In *Bland vs. Edwards*, 52 Louisiana Annual, 822, an interdiction suit in which an application was made to the Supreme Court of Louisiana to issue an order authorizing the taking of further evidence under Article 396 of the Revised Civil Code, the Court said:

> "He (appellant), it is true, alleges that by proper evidence, by leave of the Court, under Article 396, Revised Civil Code, it can be shown that the judgment can be reversed. The article just cited cannot be enforced by permitting further evidence to be heard be-

> fore this Court. The Constitution has determined the mode to be followed in bringing up appeals from inferior courts. The law provides that the appeal be heard on the pleadings and documents transmitted from the inferior courts. Evidence, therefore, coming up in any other manner, is not to be heard. The articles of the Code of Practice are plain upon the subject. This Court referred to Article 396 of the Revised Civil Code in one of its decisions (chiefly indicating the law's solicitude in the matter of interdiction), holding that ti should be provoked only with the greatest care, and after thorough investigation. Upon a careful examination of this question we feel certain that Article 396 is a dead letter. It was one of the articles of the Code of 1808, and may have been given effect when courts of appeal had original jurisdiction to a far greater extent than they now have. It was copied in the Code adopted since, although certainly at variance with laws regulating appeals. (Code prac., Art. 894.) The appeal is therefore dismissed *ex proprio motu.*"

As to the charge that "it was imperative for the Supreme Court of Louisiana * * * to remand the case to the trial Court":

The remanding of the case was a matter entirely within the discretion of the Supreme Court of Louisiana which cannot be controlled, but it is but fair to the Supreme Court of Louisiana to again point out that the "Motion to Abate and Dismiss or Remand" (Rec., p. 40), was filed on March 4, 1915, thirty-nine days after the Supreme Court had decided the case on January 25, 1915 (Rec., p. 28), and twenty-two days after plaintiff in error had applied for a rehearing (Rec., p. 35); and to also again point out that, under Articles 420 and 421 of the Revised Civil Code, quoted in full

in our original brief, plaintiff in error (to paraphrase those articles) could and can at any time "when the causes which gave rise to his interdiction have ended" apply to the Court which interdicted him "to repeal the definitive judgment by which the interdiction has been pronounced," and therefore there was no necessity to remand.

We respectfully submit that the motion to dismiss should prevail, and that plaintiff in error has failed to meet any of the arguments and authorities cited by defendants in error, or to advance a single reason or argument to sustain the jurisdiction of this Court.

GEORGE DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
Of Counsel for Defendants in Error.

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE,
Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Defendants in Error.

SYLLABUS.

1. This record is barren of any proof of evidence that plaintiff in error has removed permanently from the

State of Louisiana with the intention of remaining permanently in, and becoming a citizen of Tennessee.

2. The record is barren of any evidence or proof of the jurisdiction of the Probate Court of Shelby County, Tennessee, to hear and determine the issues presented to it.

3. No statute or law of Tennessee was filed or offered in evidence in the Supreme Court of Louisiana by which the jurisdiction or powers of the Tennessee Court could be determined and the faith and credit to which it was entitled by law or usage in the State of Tennessee be ascertained.

4. This Court will not take judicial notice of the decisions of the Courts, or laws, of one State in a case coming to it from another State.

May It Please the Court:

Having been obliged to submit this cause on the briefs on file on our motion to dismiss, or affirm, because unable to be present at the argument on November 16th, and the cause having been argued by counsel for plaintiff in error, who, on November 23rd, served upon us a copy of their brief on the merits, we respectfully ask leave to file this brief in reply.

As the brief of plaintiff in error is really an argument of case No. 656 of the Docket of this Court, entitled Gasquet, Plaintiff in Error, v. Charles Payne Fenner, Exe-

cutor, and Mrs. Fenner and Mrs. Westfeldt, sisters of Gasquet, none of whom are parties to this record, and as the motion to consolidate that cause with this one was not granted, or considered, prior to the argument of this cause, we will not follow plaintiff in error's brief and discuss a case not before the Court, but will content ourselves with briefly answering some portions of the brief.

FACTS OF THE CASE.

We adhere to the statement of facts in our brief on motion to dismiss or affirm and call attention to some facts shown by the record.

Mrs. Fenner and Mrs. Westfeldt, sisters of Gasquet, are not parties to this record, they withdrew in order that their husbands might testify (See opinion of Supreme Court of Louisiana, R., p. 28).

The correctness or incorrectness of the judgment of the Criminal District Court for the Parish of Orleans is not involved in the case before this Court.

The correctness or incorrectness of the judgment of the Court of Appeals for the Parish of Orleans is not involved in the case before this Court; the Supreme Court of Louisiana, the highest Court of the State, held that the said Court of Appeals had exceeded its jurisdiction, and this Court has repeatedly held that the decision of the Supreme Court of a State on such a point is binding on this Court.

The Supreme Court of Louisiana having jurisdiction on appeal both of facts and law (Constitution of 1913,

Art. 92), decided against plaintiff in error on the facts. A glance at plaintiff in error's petition for rehearing to the Supreme Court of Louisiana (Rec., pp. 59-60 [illegible]), shows this fully without even the necessity of looking further.

There is no evidence in the record that plaintiff in error

> "removed permanently from the State of Louisiana to the State of Tennessee with the intention of becoming a citizen of that State and domiciled himself in the City of Memphis" (Plaintiff in error's brief on merits, p. 9),

beyond the allegations of plaintiff in error on the "Motion to Abate and Remand" filed in the Supreme Court of Louisiana, after the decision of that Court, granting an application for rehearing, and beyond the finding of that fact contained in the finding of the Probate Court of Tennessee (Rec., p. 30 and pp. 39 to 40).

There is no evidence or proof in the record of the jurisdiction of the Probate Court of Tennessee to hear and determine the issues presented to it.

No statute or law of Tennessee was filed or offered in evidence or even referred to in the Supreme Court of Louisiana, by, or through which the jurisdiction and powers of the Probate Court of Tennessee can be learned —the motion to abate and dismiss, or remand, filed in the Supreme Court of Louisiana (Rec., p. 41) based upon the proceedings in the Tennessee Court, says they were taken "in accordance with Sections — of the Revised Laws of Tennessee."

The "motion to abate and dismiss or remand" (Rec., pp. 40 to 49) and exhibits annexed thereto is barren even

of the allegations that the County Court was vested with jurisdiction to the premises and the rest of the parties.

The concluding part of the judgment of the Probate Court of Tompkins County Nov. 2, 40, inevitably leads to the conclusion that if the Probate Court of Tompkins had any jurisdiction whatsoever to matters of jurisdiction, its jurisdiction to entertain a proceeding involving a person's conditions of mind and capacity, or the powers, to control himself and his property, is confined to cases in which the County of Tompkins have previously a judgment of incompetency, and placed the responsibility of the incumbent in the custody or charge of some officer accountable to the Court, and a proceeding is initiated to set aside, or revoke this judgment, and restore his liberty.

The concluding part of the judgment of the Probate Court reads:

> "It is further adjudged, decreed and declared by the Court that said Howard Coughlin [illegible] is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to possession [illegible] of his property having control, charge or management of any of the same and it appears that [illegible] of the said Report in favor of the petitioner against the allegations contained [illegible] thereof."

It is evident that the words:

> "any discretion of the said Surrogate in respect of the proceedings [illegible] [illegible] [illegible] being barely 'subject to'"

is a stock form of judgment used when a decree of interdiction theretofore rendered by a Court in Tennessee is set aside, as the Courts of one State cannot set aside the judgments of the Courts of another State.

The portion of the judgment entitling an interdict to a "settlement from any and all persons having control, charge or management of his estate," can only affect persons vested with control by the laws of Tennessee.

ARGUMENT.

In our "Supplemental Brief on Behalf of Defendants in Error, in Reply to Brief of Plaintiff in Error," on the motion to dismiss or affirm, heretofore filed, we pointed out the error of plaintiff in error, now again repeated, in claiming that Article 396 of the Civil Code of Louisiana is in force, and that the Supreme Court of Louisiana had the power, and it was, therefore, its duty, to receive additional evidence in this case.

The case of **Franke v. His Wife, 29 A., 304**, which plaintiff in error (Brief on the Merits, p. 16) says fully discussed and recognized the right of the Supreme Court of Louisiana "to examine the interdict himself to satisfy itself that he was a fit subject for interdiction" and to receive new proof, is the case referred to in **Bland v. Edwards, 52 An., 822**, quoted by us as deciding that the Supreme Court of Louisiana had only appellate jurisdiction, that it could not hear evidence, and that Article 396 of the Civil Code of Louisiana is a dead letter, a relic of

the Code of 1808. The Code of 1808 was adopted prior to the admission of Louisiana into the Union, and while it was a territory, the highest Court of the territory was the "Superior Court" which, under Section 4 of the Act of Congress, entitled "An Act Erecting Louisiana into Two Territories, and Providing for the Temporary Government Thereof," approved March 26th, 1804, had "original and appellate jurisdiction in all civil cases of the value of one hundred dollars."

The first Constitution of Louisiana, adopted January 22nd, 1812, in pursuance of "An act to enable the people of the Territory of Louisiana to form a Constitution and State Government," approved February 20th, 1811, provided that:

> "Article IV. Section 1. The judiciary powers shall be vested in a Supreme Court and inferior Courts.
>
> "Section 2. The Supreme Court shall have appellate jurisdiction only, which jurisdiction shall extend to all civil cases in which the matter in dispute shall exceed the sum of three hundred dollars."

This restriction of the Supreme Court to appellate jurisdiction has been repeated in all subsequent Constitutions, viz: Constitutions of 1845, Article 63; 1852, Article 62; 1864, Article 70; 1868, Article 74; 1879, Article 81; 1898, Article 85; 1913, Article 85.

So that the Supreme Court of the **State** of Louisiana has never had original jurisdiction, and was never at any time empowered "to examine the interdict himself to satisfy itself that he was a fit subject for interdiction,"

and we are at a loss to understand why counsel for plaintiff in error should repeat such a statement, especially when no such point was made in the Supreme Court of Louisiana.

We admit that Article 415 of the Revised Civil Code of Louisiana likens the interdict to a minor (Brief of plaintiff in error on merits, p. 18), that a minor's domicile may be changed by his tutor, and that the minor may apply to the Court of his domicile to be emancipated, and is not bound to apply to the Court which appointed the tutor, but minority is not, like interdiction, the consequence of a judgment, which remains in full force until set aside.

Article 420 of the Code, quoted by plaintiff in error (Brief, p. 17) says there must be a definitive judgment, pronouncing the repeal of the interdiction, and this repeal can only be pronounced by the Court which rendered it, no Court having the power to do so under the Constitution and laws of Louisiana except the Court which rendered the judgment or the proper appellate Court. **State Ex Rel Chandler v. Ellis, Judge, 43 La. An., 825; State Ex Rel Chandler v. King, 43 La. An., 826, 827; State v. Sommerville, 112 La., 1091, 1095.**

Full Faith and Credit Clause of the Federal Constitution.

It is not only true, as shown in our brief on our motion to dismiss, that this asserted Federal question was raised

too late, and that it was not entertained and passed upon by the Supreme Court of Louisiana, but it is also true that plaintiff in error has not placed himself in a position to invoke the full faith and credit clause of the Federal Constitution.

Section 960 of the United States Revised Statutes provides that "the records and judicial proceedings so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken."

Plaintiff in error failed to plead in the Supreme Court of Louisiana the construction given the statutes of Tennessee by the Courts of Tennessee, or introduce in evidence the laws of that State as printed under the authority thereof, or a certified copy thereof, or introduce in evidence the printed books of cases adjudged in the State of Tennessee by which the Supreme Court of Louisiana could determine the faith and credit which the decision of the Probate Court of Shelby County, Tennessee, had, by law or usage in the Courts of Tennessee. **Lloyd v. Mathews, 155 U. S., 222.**

This Court will not take judicial notice of the decisions of the Courts or laws of one State in a case coming to it from Courts of another. **Eastern Building Association v. Williamson, 189 U. S., 122; Hanley v. Doneghan, 116 U. S., 1; Chicago and Alton Railroad Company v. Wiggins Ferry Company, 119 U. S., 615; Lloyd v. Mathews, 155 U. S., 222.**

Prima facie proof of the laws of other States is made in Louisiana by introducing in evidence the published

statutes of such other States (R. S., Sec. 1140), and in the absence of proof the statutes of such other States are presumed similar to the statutes of Louisiana **(Nolte v. Ventress, 19 La., 373)** which authorize a proceeding such as was apparently had in the Probate Court of Shelby County, Tennessee, only where a judgment of interdiction has been pronounced in a Louisiana Court and suit is brought in that same Court to "repeal" the judgment of interdiction. (See Article 420, R. C. C. of La., quoted in plaintiff's brief on merits, p. 17.)

There is no such thing in Louisiana as an original inquiry into a person's sanity followed by a judgment establishing sanity binding on the world inside and outside of Louisiana, and it is too plain for argument that a Court of one State cannot set aside the judgment of the Court of another State, and make such judgment effective by merely pleading the full faith and credit clause of the Constitution.

When Case No. 656 is reached in this Court in due course, we have no doubt of our ability to show that the Probate Court of Shelby County, Tennessee, was not possessed of such jurisdiction and power as is claimed to render judgment in favor of plaintiff in error on his **ex parte** application irrespective of prior proceedings in Tennessee, and that if by chance it had any such power, yet plaintiff in error, for many other good and sufficient reasons, could not be granted the relief sought by him in suit No. 656 of the docket.

We, therefore, respectfully ask that our motion to dismiss or affirm be granted and this cause be dismissed for

want of jurisdiction, or the judgment of the Supreme Court of Louisiana be affirmed.

Respectfully submitted,

GEORGE DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE,

Counsel for Defendants in Error.

MOTION TO DISMISS OR AFFIRM

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Supreme Court of the United States

No. 116.

OCTOBER TERM, 1916.

Fernand Vaughan Gasquet,
Plaintiff in Error,
versus
George F. Lapeyre and J. Martial Lapeyre,
Defendants in Error.

On Motion of Defendants in Error to Dismiss or Affirm.

Brief on Behalf of George F. Lapeyre and J. Martial Lapeyre, Defendants in Error, on Their Motion to Dismiss the Writ of Error, or Affirm the Judgment of the Supreme Court of Louisiana.

STATEMENT OF THE CASE.

Defendants in error brought suit in the Civil District Court of New Orleans to interdict Plaintiff in Error Gasquet, who was then domiciled in, and a citizen of

Louisiana (R., p. 2), and judgment of interdiction was pronounced against Gasquet (R., pp. 8 and 9).

Amongst other allegations of the petition for interdiction, it was stated (R., p. 4) that Gasquet had been indicted in the Criminal District Court of New Orleans for shooting with intent to murder; that the grand jury had refused to find a true bill on the ground of insanity, and thereupon the Criminal Court had committed Gasquet to the Asylum for the Criminal Insane until cured and of sound mind, but, because of lack of proper accommodations at the insane asylum, Gasquet had remained in the custody of the Criminal Sheriff of Orleans.

Gasquet appealed from the judgment of interdiction to the Supreme Court of Louisiana, and the appeal was argued November 4th, 1914 (R., p. 27).

On the same day, November 4th, 1914, before the argument, Gasquet filed in the Supreme Court of Louisiana what he termed a "Plea of res adjudicata" based upon proceedings had in the Court of Appeal of Orleans (an intermediate appellate Court) in which Gasquet had applied for a writ of habeas corpus, seeking his release from the custody of the Criminal Sheriff, and the Court of Appeal had released him from custody on the ground that he had recovered his sanity, and that it would no longer endanger the safety and peace of the community that he be restored to his liberty (R., p. 11-15).

Gasquet prayed that the Supreme Court of Louisiana maintain his plea of res adjudicata, annul, avoid and reverse the judgment of interdiction rendered by the

Civil District Court, and decree him to be sane and capable of taking care of his person and property (R., p. 14).

This plea of res adjudicata averred that if the judgment of the Court of Appeal were not given full effect, he would be deprived "of his liberty and property and status in society without trial by jury, without a judicial hearing, and without due process of law, in violation of **Amendments 5 and 14** of the Constitution of the United States" (R., p. 14).

The Supreme Court of Louisiana, on the 25th of January, 1915, pronounced its opinion and decree affirming the judgment of interdiction of the Civil District Court, and overruling the plea of res adjudicata, holding that the Court of Appeal had no jurisdiction, or authority, to set aside the judgment rendered by the Criminal District Court, and no jurisdiction of the subject matter of the interdiction of Gasquet (R., pp. 30 and 31). The suggested Federal questions were not passed upon.

On the 8th of February, 1915, Gasquet applied for a rehearing (R., p. 35), in which he invoked the protection of **Article 1, Section 9** of the U. S. Constitution, and on March 4th, 1915, while the application for rehearing was under consideration by the Court Gasquet filed a "Motion to abate and remand" (R., p. 40).

This motion to abate and remand was based upon a transcript of record in the Probate Court of Shelby County, Tennessee (R., p. 42, et seq.), exhibiting a petition filed by Gasquet in that Court on February 19th, 1915, in which petition he recited the aforesaid proceedings in the Civil District Court, Criminal District Court and Court of Appeal in New Orleans; his appeal to the

Supreme Court of Louisiana from the judgment of the Civil District Court interdicting him; the affirmance by that Court of the judgment of interdiction; that he had applied to the Supreme Court of Louisiana for a rehearing; that his application for a rehearing was then pending; that immediately upon his release from custody by the habeas corpus proceedings he had left the State of Louisiana, and gone to Memphis on July 24th, 1915, to make that city his permanent place of residence, and was then a permanent resident thereof; that he was, at the time of the habeas corpus proceeding, and was then, of sound mind capable of controlling himself, and always had been; and he prayed that the Court order the summoning of a jury of twelve freeholders to ascertain by inquisition the condition of his mind and make return thereof to the Court for such relief as might be warranted by law.

Upon the filing of the above petition the Judge of the Probate Court of Shelby County, Tennessee, ordered that a jury be summoned as prayed for, and the jury was summoned and found that Gasquet was of "sound mind and had sufficient capacity for the government of himself and property" and the Court rendered judgment accordingly.

Upon the faith of the above proceedings in, and judgment of, the Probate Court of Shelby County, Tennessee, Gasquet moved that the proceedings in the Supreme Court of Louisiana "be abated and dismissed, or that they be remanded to the Civil District Court of the Parish of Orleans with such instructions from this Court as may be necessary to that end."

The motion to "abate and dismiss or remand" set up that the judgment of the Tennessee Court was entitled to full faith and credit under Section 1 of Article 4 of the Constitution of the United States, and was conclusive of Gasquet's mental condition and ability to take care of himself and his property (R., p. 41).

This motion to abate and remand was not taken contradictorily with the present defendants in error, plaintiffs in the suit, and no notice thereof was given them.

On the 22nd day of March, 1915, a rehearing was refused, and on the same day the motion to abate and remand was denied, without any opinion or the assignment of any reasons in either case (R., p. 50). The Court did not pass upon the Federal question suggested.

Gasquet thereupon, on the 30th day of March, applied for, and was allowed a writ of error to this Court by the Chief Justice of Louisiana (R., pp. 52 and 53).

Gasquet assigns as error (R., p. 54):

1st. That the Court erred in refusing to give effect to the judicial proceedings in the Probate Court of Shelby County, Tennessee, and that to deny full faith and credit to said judicial proceedings was a violation of Section 1, Article 4, of the Constitution of the United States—the full faith and credit clause.

2nd. That the Court erred in reversing and setting aside the judgment of the Court of Appeal of New Orleans in the habeas corpus proceedings, and "has thereby deprived Gasquet of his liberty, status in society and vested rights without due process of law and equal protection of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States."

3rd. That the effect of the judgment of the Supreme Court declining to give effect to the judgment of the Court of Appeal of New Orleans and the effect of the judgment of the Supreme Court reversing and setting aside the judgment of the Court of Appeal is to suspend the privilege of the writ of habeas corpus guaranteed under Section 9 of Article 1 of the Constitution of the United States.

The transcript of record of the proceedings in the Probate Court of Shelby County, Tennessee, makes no reference to the law of Tennessee authorizing an extraordinary proceeding whereby a presumably sane man, who has not been pronounced insane in Tennessee, may make an application to one of its Courts for an ex parte finding, binding on all the world, that he is of sound mind and capable of taking care of his person and property. The "motion to abate, dismiss and remand" filed in the Supreme Court of Louisiana simply says (R., p. 41) that it was had "in accordance with sections of the Revised Laws of the State of Tennessee."

The statute of Tennessee under which the proceedings were instituted was not filed in the Supreme Court of Louisiana, nor offered in evidence in that Court; the presumption, therefore, is that it was similar to our own law **(19 La. An., 373, Nolte v. Ventress)**, which provides a proceeding to set aside a judgment of interdiction rendered by a Court of Louisiana and the resumption of the interdict's rights only after definitive judgment repealing the interdiction **(R. C. C., 420, 421)**, but provides no ex parte proceeding to test any man's sanity.

Articles 420 and 421 of the Revised Civil Code read as follows:

> "Art. 420 (407). Interdiction ends with the causes which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced.
>
> "Art. 421 (408). Interdiction can only be revoked by the same solemnities which were observed in pronouncing it."

ARGUMENT.

It appears, therefore, from the foregoing statement of facts, borne out by the record, that none of the Federal questions assigned as error was considered or passed upon by the Supreme Court of Louisiana, and that its decision was based upon grounds broad enough to sustain it and which this Court has no jurisdiction to review.

FIRST.

The first assignment of error (R., p. 54), that full faith and credit had not been given to the judgment of the Probate Court of Shelby County, Tennessee, in violation of Section 1, Article 4 of the Constitution of the United States will not be considered by this Court be-

cause the asserted Federal question was raised too late, and was not entertained or passed upon by the State Court of last resort.

This asserted Federal question was raised after the judgment of the Supreme Court of Louisiana (the Court of last resort) had been rendered, and was not entertained or passed upon by that Court.

The Record shows (p. 28) that the judgment of the Supreme Court of Louisiana was rendered January 25th, 1915; that Gasquet applied for a rehearing February 8th, 1915 (R., p. 35); that it was only on February 19th, 1915, that Gasquet began his proceedings in the Probate Court of Shelby County, Tennessee; that the judgment of the Shelby County Court was rendered February 20th, 1915 (R., p., 48); that the motion to "abate and dismiss or remand," raising the Federal question, was filed March 4, 1915 (R., pp. 40 and 42); that the rehearing was refused, and motion raising the Federal question denied on March 22nd, 1915, without any opinion or assignment of reasons; the entry with reference to the motion being that it was "denied" (R., p. 50).

That the Federal question was raised too late is well settled.

In **225 U. S., 326, Consolidated Turnpike Company v. Norfolk and Ocean View Railway**, this Court said, on page 333:

> "Upon a petition for rehearing filed in the Supreme Court, one of several grounds stated was, that a decree taking the land in question without compensation for the improvements thereon would be 'a taking without due process of law in

violation not only of the Constitution of Virginia, but of the Fourteenth Amendment to the Constitution of the United States.' This application was refused, without opinion, the judgment entry being in these words:

"'The Court having maturely considered the petition aforesaid, the same is denied.'

"The words 'maturely considered' do not impart any decision of the question made. Just such an entry has been held to be no more than a refusal to rehear the case. **Forbes v. State Council, 216 U. S., 396.**

"Nothing is better settled than that it is too late to raise a Federal question for the first time in a petition for a rehearing, after the final judgment of the State Court of last resort. If, however, the State Court actually entertains the petition and decides the Federal question, and this appears by the record, the requirement of **Section 709** that the right shall be specifically set up and denied is complied with. **McCorquodale v. Texas, 211 U. S., 432; Mallet v. North Carolina, 181 U. S., 589; McMillen v. Mining Company, 197 U. S., 343, 347.**"

Apart from the late date upon which the issue was raised, it is quite apparent that the asserted Federal question is entirely devoid of merit and frivolous. The judgment of the Supreme Court of Louisiana had been rendered when the proceedings were instituted by Gasquet in the Tennessee Court. The attempt was to avoid the effect of the Louisiana judgment, and to divest the Louisiana Court of jurisdiction, which was unquestioned. It was an attempted denial of full faith and credit to the Louisiana judgment.

Moreover, the statutes of Tennessee under which the proceedings in the Probate Court of Shelby County were conducted, not having been offered in evidence, and filed in the Supreme Court of Louisiana, and the presumption being, in the absence of evidence, that the Tennessee law was similar to the Louisiana law, the jurisdiction of the Tennessee Court was limited to a proceeding to set aside a judgment of interdiction theretofore pronounced by a Tennessee Court, and it had no power to enter into an ex parte inquiry into the sanity of Gasquet, whose sanity had not been attacked in a Tennessee Court, or to entertain a proceeding the purpose of which was to set aside and revoke a judgment of a Court of a sister State, which was itself entitled to the full faith and credit invoked by Gasquet for his anomalous judgment **(R. C. C. of La., 420, 421; Nolte v. Ventress, 19 La. An., 373.)**

We have no doubt that the Tennessee statute really went no further than the Louisiana statute, for such a proceeding as claimed here, would be an anomaly, the presumption in favor of sanity being universal.

Whatever effect the judgment of the Tennessee Court might be given within the State of Tennessee, it is manifest that it could not affect any property of Gasquet in the State of Louisiana, or any proceeding against him in Courts of Louisiana having unquestioned jurisdiction over him when the proceedings were instituted.

The demand of Gasquet was, in effect, that the Supreme Court of Louisiana should set aside its judgment and that of the District Court, and substitute the judgment of the Court of Tennessee, because, since the institution of the proceedings in Louisiana Gasquet had gone

into another State and secured an ex parte judgment finding him sane.

The Courts of Tennessee could not reverse, or overrule, or affect judgments of the Courts of Louisiana, or proceedings in its Courts. The State of Louisiana is sovereign and the judgments of her Courts are beyond question, except in such cases as are reviewable by this Court under the Constitution of the United States.

Articles 420 and 421 of the Revised Civil Code of Louisiana provide for the revocation of a judgment of interdiction when the causes which gave rise to it no longer exist, and provide a speedy and adequate remedy, open to Gasquet, when he began his anomalous suit in Tennessee, and still open to him at this day.

SECOND.

The Second Assignment of Error, that "in reversing and setting aside the judgment of the Court of Appeal for the Parish of Orleans in the habeas corpus proceedings," the Supreme Court of Louisiana has "thereby deprived petitioner of liberty, status in society and vested rights, without due process of law, and equal protection of law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States" is also devoid of all merit and therefore frivolous.

The Supreme Court of Louisiana did not "reverse and set aside the judgment of the Court of Appeal of Orleans in the habeas corpus proceeding, and deprive Gasquet of his liberty, etc.," it simply refused to give the

judgment of the Court of Appeal the force and effect claimed for it by Gasquet, because it was not entitled to such force and effect under the Constitution and laws of Louisiana.

As shown by his motion to abate, etc. (R., pp. 40-50, and affidavit, p. 53) Gasquet is at liberty, beyond the bounds of Louisiana, and claims to be now a permanent resident of Tennessee.

This is what the Supreme Court of Louisiana said of the judgment of the State Court of Appeal (R., pp. 30 and 31):

> "The Court of Appeal had no jurisdiction or authority to revoke or set aside the judgment rendered by the Criminal District Court committing Mr. Gasquet to the state asylum for the criminal insane; nor had the Court of Appeal jurisdiction of the subject matter of the interdiction of Mr. Gasquet. Although Article 104 of the Constitution provides that the Courts of Appeal and each of the Judges thereof shall have power to issue the writ of habeas corpus at the instance of any person in actual custody, it does not follow that after issuing such writ, the Court may go on and exercise unlimited jurisdiction. Under Article 85 of the Constitution, the jurisdiction of the Supreme Court extends to suits for interdiction. And Article 98 provides that the jurisdiction of the Courts of Appeal shall extend to all cases, civil and probate, of which the Civil District Court of the Parish of Orleans or the District Courts throughout the State have exclusive original jurisdiction, when the matter in dispute or the fund to be distributed shall not exceed two thousand dollars, exclusive of interest.

> "The commitment rendered by the Criminal District Court in consequence of the criminal prosecution of Mr. Gasquet was not a judgment of interdiction, nor do the plaintiffs contend that it was. Hence, if the Court of Appeal had authority to set aside the commitment of the Criminal District Court and release Mr. Gasquet from the custody of the Criminal Sheriff, the judgment of the Court of Appeal would, nevertheless, have no effect upon the judgment of interdiction rendered by the Civil District Court in this suit."

The question presented to the Supreme Court of Louisiana by Gasquet's "plea of res adjudicata" (R., pp. 11 et seq.), involved a construction of the Constitution and laws of the State of Louisiana in reference to State Courts, and Gasquet's claim that a construction different from that contended for by him violates the Fifth and Fourteenth Amendments to the Constitution of the United States requires no further argument than the mere statement of the proposition to demonstrate its unsoundness.

The Supreme Court of Louisiana is the Court of last resort of the State, and the Court of Appeals for the Parish of Orleans is an intermediate appellate Court subordinate to the Supreme Court (Constitution of Louisiana, Articles 84, 85, 98, 131).

As the highest Court of Louisiana, the decisions of its Supreme Court on questions involving a construction of its Constitution and laws in reference to State Courts are binding upon this Court.

> "But it is equally well settled that it is for the Supreme Court of a State finally to determine its

> own jurisdiction, and that of other local tribunals, since the decision involves a construction of the laws of the State by which the Court was organized. **Standard Oil Company v. Missouri, 224 U. S., 281; Iowa City Ry. v. Iowa, 160 U. S., 389.**"

To state and answer the question put by this Court:

> "Was any title, right, privilege or immunity under the Constitution or any statute or authority exercised under the United States, specially set up and claimed by plaintiff in error, denied by the decision of the State Court?" **Missouri Pacific Railway Co. v. Fitzgerald, 160 U. S., 556, 574.**

Manifestly not. Plaintiff in error set up that the judgment of the State Court of Appeals was decisive of his sanity, constituted res adjudicata, and if not given full effect would deprive plaintiff in error of his liberty, etc., without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States, and the Supreme Court of Louisiana held that the Court of Appeals was without jurisdiction under the Constitution and laws of Louisiana to pass on Gasquet's sanity, that such jurisdiction was vested only in the District Courts and Supreme Court of Louisiana.

The asserted Federal question was not considered or passed upon, and the decision was based upon a ground broad enough to sustain it, and which this Court has no jurisdiction to review.

In **Eustis v. Bolles, 150 U. S., 361, 366,** this Court said:

> "It is settled law that, to give this Court jurisdiction of a writ of error to a State Court, it must

appear affirmatively, not only that a Federal question was presented for decision by the State Court but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it. **Murdock v. Memphis, 20 Wall., 590; Cook County v. Calumet & Chicago Canal Company, 138 U. S., 635.**

"It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has also been raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment."

To the same effect: **Missouri Pacific Railway Company v. Fitzgerald, 160 U. S., 556; Chappel Chemical Company v. Sulphur Mines Company, 172 U. S., 465, 471,** and authorities there cited; **Rutland Railroad Company v. Central Vermont Railroad, 159 U. S., 630, 641; Gillis v. Stanchfield, 159 U. S., 658; New Orleans and Northeastern Railroad Company v. National Rice Milling Company, 234 U. S., 80.**

This Court said in the case of **Parker v. McLain:**

"Our jurisdiction to review the judgment of the highest Court of a State turns upon whether a Federal right was specially set up or claimed in that Court and denied by its decision. Judicial Code

> Section 237. And to be effective for this purpose the assertion of a Federal right must not be frivolous or wholly without foundation. It must at least have fair color of support, for otherwise an utterly baseless Federal right might be set up or claimed in almost any case, and the jurisdiction of this Court invoked merely for purposes of delay." **Parker v. McLain, 237 U. S., 469, 471.**

In the face of the record, which shows an orderly proceeding under admittedly valid laws of Louisiana, in Courts where jurisdiction is not questioned, conducted contradictorily with plaintiff in error, Gasquet, bitterly contested by him in the lower Courts and Court of last resort of Louisiana; in which he has been afforded and has fully exercised his right to be heard and has been fully heard, and has not been denied any privilege or right granted by law, it is apparent that the claim of a denial of due process of law and equal protection of law is so frivolous and utterly baseless as to make it unnecessary to refer to any of the many decisions of this Court dealing with the Fourteenth Amendment.

The apparent contention of plaintiff in error being that the Fourteenth Amendment has been violated because the Supreme Court of Louisiana has, in his opinion, decided erroneously, we content ourselves with referring to **Central Land Company v. Laidly, 159 U. S., 103, 112.**

As to the asserted violation of the Fifth Amendment of the Constitution of the United States, it is sufficient to say that the first eight Articles of Amendment to the Constitution of the United States have reference only to powers exercised by the United States, and not those exercised by the States. **Eilenbecker v. District Court of**

Plymouth County, 134 U. S., 31; Winous Point Shooting Club v. Casperseu, 193 U. S., 189, 191.

In the answer of Gasquet to the petition for interdiction filed in the State District Court (R., pp. 7 and 8, par. VI and X) he set up that the judgment of the Criminal District Court committing him to the Asylum for the Criminal Insane violated the **Fifth and Fourteenth Amendments** of the Federal Constitution and the allegations of the answer to that effect were referred to and copied in the plea of res adjudicata (R., p. 13) and the Supreme Court of Louisiana in its opinion (R., p. 30), said that the provisions of the law of Louisiana which authorized the Criminal District Court to render the judgment committing Gasquet to the Asylum for the Criminal Insane did not "deprive a person of his liberty without due process of law, which means due notice and opportunity to be heard," but this expression of opinion had nothing to do with the asserted violation of those Amendments set forth in the petition for writ of error and assignment of errors (second assignment R., p. 54; petition p. 52) in which the claimed violation is confined to the asserted error of the Supreme Court "in reviewing and setting aside the judgment of the Court of Appeal in the habeas corpus proceedings."

None of the violations of the Constitution of the United States claimed in the petition for writ of error and assignment of errors, was referred to in the opinion of the Supreme Court of Lousiana, which is based entirely upon State law, and upon considerations and evidence having nothing to do with the judgment of the Criminal District Court (R., p. 31).

Besides, as has already been stated, Gasquet is at liberty by reason of the habeas corpus proceedings which have released him from the commitment to the Insane Asylum by the Criminal District Court, and the lawfulness or unlawfulness of that commitment is a moot question insofar as this suit for his interdiction is concerned.

THIRD.

The third Assignment of Error that the effect of the judgment of the Supreme Court of Louisiana, declining to give effect to the judgment of the State Court of Appeal, and reversing and setting aside said judgment is to suspend the privilege of the writ of habeas corpus granted under Section 9 of Article 1 of the Constitution of the United States cannot be considered because not made in the State Court previous to the petition for rehearing and petition for writ of error and assignment of errors and besides is wholly devoid of merit and frivolous.

The plea of res adjudicata filed by plaintiff in error in the Supreme Court of Louisiana (R., pp. 11-15) sets up violation of the Fifth and Fourteenth Amendments of the Federal Constitution but does not make any claim of violation of Article 1, Section 9 of the Federal Constitution with reference to suspension of privileges of writ of habeas corpus.

Violation of Article 1, Section 9 of the Federal Constitution was first claimed in the petition for rehearing, paragraph II (R., p. 36); then in the petition for writ of

error (R., p. 52) and finally in the assignment of errors (R., p. 54.)

As decided in **Consolidated Turnpike Company v. Norfolk and Ocean View Railway, 225 U. S., 323,** and other cases hereinabove referred to, it is too late to raise a Federal question in a petition for rehearing, and not having been entertained and passed upon by the State Supreme Court, the requirement of Section 709 R. S., that the right shall be specifically set up and denied has not been complied with and this Court will not consider the asserted Federal question.

That a Federal question cannot be first raised in a petition for writ of error or assignment of error is also settled, in **Mallers v. Commercial Loan and Trust Co., 216 U. S., 613; Hulbert v. Chicago, 202 U. S., 275; Corkran Oil Company v. Arnaudet, 199 U. S., 182 193; Winous Point Shooting Club v. Casperseu, 193 U. S., 189, 191; New York Central Railroad v. New York, 186 U. S., 269, 273; Arkansas v. Schlierholz, 179 U. S., 598, 601; Leeper v. Texas, 139 U. S., 462, 467.**

Section 9 of Article 1 of the Constitution of the United States has no reference to State action or powers, it deals alone with powers denied to the United States.

Moreover, suppression of the **privilege** of the writ of habeas corpus is a legislative power and no exercise of legislative power is complained of. **Ex Parte Merriman, 1 Taney, 246.**

This assignment of error erroneously states the action of the Supreme Court with reference to the habeas corpus proceedings in the State Court of Appeal. The Supreme Court did not reverse and set aside the judgment

of the Court of Appeal. Gasquet has been, and is, at liberty since the Court of Appeal released him, and is now in Memphis. What the Supreme Court decided was that the Court of Appeal had acted beyond its jurisdiction and that under the Constitution and laws of Louisiana it had no jurisdiction whatsoever over matters of interdiction; that jurisdiction of interdiction cases was by the Constitution and laws of Louisiana vested solely in the District Courts and Supreme Court of Louisiana.

CONCLUSION.

Because the first and third Assignments of Error were raised too late, and they as well as the Second Assignment of Error were not considered or passed upon by the Supreme Court of Louisiana, whose decision is founded upon a construction of the Constitution and laws of Louisiana, a ground broad enough to sustain the judgment irrespective of any Federal question, and because the Federal questions asserted are in themselves wholly wanting in substance and therefore frivolous. We respectfully submit that the writ of error should be dismissed for want of jurisdiction, or that if the writ of error shall not be dismissed, that the judgment of the Supreme Court of Louisiana should be affirmed, although in the opinion of the Court the record might show that this Court has jurisdiction, and that the asserted Federal questions are not purely frivolous, be-

cause it is manifest that they are of such unsubstantial character as to be devoid of all merit and therefore frivolous and taken for delay.

Respectfully submitted,

GEORGE DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE.

Of counsel for

Defendants in Error.

October, 1916.

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE and J. MARTIAL LAPEYRE,
Defendants in Error.

Writ of Error to Supreme Court of Louisiana.

On Motion of Defendants in Error to Dismiss or Affirm.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

STATEMENT AND ARGUMENT.

A motion has been made to consolidate the cases of *Fernand Vaughan Gasquet vs. George F. Lapeyre and J. Martial Lapeyre*, No. 116, October Term, 1916, and *Fernand*

Vaughan Gasquet vs. Chas. Payne Fenner, Testamentary Executor, and Mrs. Evelyn Gasquet Fenner and Mrs. Martha Gasquet Westfeldt, No. 656, October Term, 1916, on the ground, substantially, that the issues in both cases are identical. This motion was submitted in open court on October 23, 1916, and is at present under advisement.

The motion to dismiss filed by defendants in error in Case No. 116 is made on purely technical grounds, applicable to the character of cases cited, but a proceeding for interdiction, seeking to deprive a party of his civil rights and status in society, is *sui generis* and not to be tested by the general law. The defendant was at liberty at all times to show his recovery during the proceeding. An interval of about ten months elapsed between the judgment of the trial Court and the final judgment of the Supreme Court of Louisiana, during which time it is argued Gasquet's hands were completely tied. It must be borne in mind that the Louisiana judgment relates to a period in May, 1914. In the very nature of the case, it was imperative for the Supreme Court of Louisiana to receive the evidence of Gasquet's return to competency, or to remand the case to the trial court. It might very well be that the day following a judgment of interdiction the defendant might no longer be incompetent, and to hold that he can be kept for ten months under the cloud of an interdiction proceeding because he can offer no evidence is indeed a considerable hardship upon him. The Civil Code of Louisiana, Article 396, expressly recognizes the power of the Supreme Court to receive original evidence in interdiction proceedings. The cases cited by defendants in error are one and all conclusively with property rights as to which the evidence in the nature of things was all in existence and available at the time of the

trial of the case, and any failure to produce the proof necessary to sustain the defense is attributable to laches; but in the case of a mental condition there are changes that are possibly occurring continually, which Courts are bound to recognize and hear until the case is finally determined.

We respectfully submit that the motion to dismiss filed herein be disallowed.

J. C. GILMORE,
EDWARD N. PUGH,
WM. WINANS WALL,
THOS. GILMORE,
Of Counsel for Plaintiff in Error.

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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Plaintiff in Error.

SYLLABUS.

Where the subject of an interdiction suit removes permanently from the State where such suit is pending

to another State, with the intention of remaining permanently in the State to which he removes and becoming a citizen of said State, and by proceedings had before a competent Court having jurisdiction of his person and domicile has been pronounced sane and capable of managing his property, the effect of such removal and such proceedings is to abate the suit pending for his interdiction in the State from which he has removed.

In Louisiana, it has been held that the death of the subject of an interdiction suit, while the appeal is pending before the Supreme Court of that State, abates the suit.

In re Lambert, 115 La., 86; In re Jones, 117 La., 106.

Where the subject of an interdiction suit removes permanently from the State and becomes a citizen of another State and is pronounced sane by a Court of competent jurisdiction and a citizen of the State to which he has removed, he is as completely eliminated, insofar as being subject to the control of the Court in which the interdiction proceedings are pending, as though he were dead.

Under the Constitution of the United States, each State of the United States regulates the status of its own citizens, and their status, as recognized by the States of their citizenships, attaches to them in every other State.

Art. 4, Sec. 2, of the Federal Constitution; Woodward v. Woodward, 87 Tenn, 11 S. W., Rep., 892, and authorities therein cited.

Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.

Art. 4, Sec. 1, Constitution of the United States.

STATEMENT OF THE CASE.

Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner; Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, duly authorized by their husbands, and George F. Lapeyre and J. Martial Lapeyre, the two former being sisters, and the two latter the uncles, of Fernand Vaughan Gasquet, brought suit, on November 13th, 1913, in the Civil District Court, Parish of Orleans, State of Louisiana, alleging that said Fernand Vaughan Gasquet was then domiciled in the City of New Orleans; that, owing to infirmities, he was incapable of taking care of his person or administering his property, and that, therefore, it was advisable and necessary that he be interdicted in accordance with law (Tr., p. 2).

Exceptions of vagueness and no cause of action were filed to the petition on November 24th, 1913 (Tr., p. 3), and on December 23rd, 1913, the plaintiffs filed a supplemental and amended petition, in which the allegations of the original petition were reiterated, and in addition it was alleged that: Said Fernand Vaughan Gasquet was subject to a habitual state of insanity and madness, although he, at times, while under the influence of narcotic drugs, appeared to have possession of his reason; that in proceedings entitled "State of Louisiana v. Fernand V. Gasquet," No. 40,089 of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, on an indict-

ment of said Fernand Vaughan Gasquet for shooting with intent to murder one Isaac Broad, otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912; that, thereupon, the District Attorney for the Parish of Orleans instituted proceedings to have Fernand Vaughan Gasquet committed to the ward for the criminal insane at Jackson, La., because his going at large was dangerous to the safety of the citizens and the peace of the State of Louisiana; that after hearing said Fernand Vaughan Gasquet was duly committed to the Louisiana State Asylum for the Criminal Insane; that for lack of proper accommodations, said Fernand Vaughan Gasquet had remained in the custody of the Criminal Sheriff for the Parish of Orleans, and was at that time held in such custody; that said Fernand Vaughan Gasquet was addicted to the abuse of alcohol and addicted to narcotics, that he had a psychopathic constitution and hardening of the arteries due to nephrites affecting his mental condition and suffered from delusions; that said Fernand Vaughan Gasquet was incapable of taking care of his person, or administering his property, and that it was advisable and necessary that he be interdicted in accordance with law (Tr., pp. 4, 6).

Fernand Vaughan Gasquet then filed an answer, in which he denied the allegations of the original petition, admitted all of the allegations of the supplemental and amended petition, with respect to the criminal proceedings, and denied all other allegations of the supplemental and amended petition.

For further answer to the original petition, he admitted that he was in the habit of taking small quanti-

ties of morphine for the purpose of allaying physical pain, under the direction of a competent and reputable physician of the City of New Orleans, but not in such quantities as to impair or affect his mind and render him incapable of taking care of his person or administering his property; and that he was in full possession of all his mental and physical faculties and fully capable of taking care of his person and administering his property.

An attack was made in **Paragraph X** upon the article of the **Revised Statutes**, providing for his commitment, in the following words:

> "That **Article 993 of the Revised Statutes** of the State of Louisiana is absolutely null, void and of no effect, because, under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said article of the Revised Statutes provides for giving effect to the **ex parte** finding of an inquisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution" (Tr., pp. 6, 8).

The case was duly tried in the Civil District Court for the Parish of Orleans, and judgment was rendered as follows:

> "This cause having been argued and submitted to the Court on the 2nd inst., and the Court having taken time to consider and being duly advised,

and by reason of the law and the evidence in favor of plaintiffs and against defendant, and for the reasons orally assigned;

"It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet, is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; cost of this proceeding to be paid out of the estate of said defendant" (Tr., pp. 8, 9).

An appeal was taken to the Supreme Court of Louisiana on June 19th, 1914.

On the 30th day of June, 1914, Fernand Vaughan Gasquet, the plaintiff in error, presented a petition for a writ of **habeas corpus** to the Court of Appeal for the Parish of Orleans, in which he charged the unconstitutionality of the article of the **Revised Statutes, No. 993**, and its repeal by Act 253 of 1910 of the General Assembly for the State of Louisiana, and that Act 264 of the Session of 1910 provided, in terms, only for the commitment of persons already convicted of crime to the ward for the criminal insane at the State Asylum for the Insane, and that as he, plaintiff in error, had never been convicted of any crime, his commitment to the ward for the criminal insane was, therefore, invalid.

The constitutionality of Act 264 of 1910, and particularly Section 4 thereof, was assailed as being unconstitutional, null and void and in violation of the bills of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution, in that said act provides that when any person charged with a felony necessarily

punishable in the State penitentiary, or by death, has been adjudged insane, before or after trial or conviction, and shall be committed to a State hospital for the insane, such person shall not be discharged from said hospital for the insane or delivered into the custody of the proper Sheriff until the Superintendent of the East Louisiana Hospital for the Insane of the State of Louisiana, the Superintendent of the Louisiana Hospital for the Insane, and in case of their disagreement, a physician appointed by the Judge of the District Court from whence said criminal insane person was committed, which said gentlemen are hereby constituted as a commission, shall be satisfied, after a thorough examination, that such person has been completely restored to sanity and may be discharged without danger to others; that the said provisions of the said act leave a person committed to said asylum entirely at the mercy of the said parties who are vested with exclusive authority to certify to his sanity **vel non**, and deprive the said person committed to the said asylum of a judicial hearing, due process of law and trial by jury, in violation of the State Constitution and Amendments 6 and 14 of the Federal Constitution. Furthermore, that said act is unconstitutional, because it delegates judicial powers in violation of Article 96 of the State Constitution, and the further allegation was made that the said Fernand Vaughan Gasquet was harmless and his going at large would not constitute a menace or be dangerous to the public safety (Tr., pp. 15, 17).

After hearing, on July 7, 1914, by a full Court, the Court of Appeal for the Parish of Orleans, handed down the following judgment:

"In June, 1912, the relator was committed to the State Insane Asylum by the Criminal District Court, under **Sec. 993, R. S.**, on the ground that he was then in such mental condition as to constitute a menace to the safety of citizens and the peace of the State. This commitment was, however, never carried out and he is still in the custody of the Criminal Sheriff of Orleans Parish.

"He now applies to this Court for his release by **habeas corpus** on the ground that those conditions no longer exist, that he has recovered his sanity and that it would no longer endanger the safety and peace of the community that he be restored to his liberty.

"The only evidence adduced fully establishes his contention; there is no evidence whatever to the contrary.

"**Under Art. 104, Constitution of 1913**, this Court has the power to issue the writ of **habeas corpus** in such cases, that is 'at the instance of any person in actual custody' within this circuit.

"**Art. 822, par. 2, and Art. 824, Code of Practice**, authorize the release of the relator under the circumstances; that is to say when the change in conditions renders the confinement no longer necessary or legal.

"It is therefore ordered that the writ of **habeas corpus** issued herein be made peremptory; and accordingly that the relator, Fernand Vaughan Gasquet be discharged and released from custody forthwith." (Tr., pp. 26, 27).

Immediately upon being released from custody, said Fernand Vaughan Gasquet removed permanently from the State of Louisiana to the State of Tennessee with the intention of becoming a citizen of that State, and domiciled himself in the City of Memphis.

On the 4th day of November, 1914, the proceedings had in the Court of Appeal for the Parish of Orleans were brought to the attention of the Supreme Court of Louisiana, by the filing of a plea of **res adjudicata** and estoppel (Tr., pp. 11, 14).

On November 4th, 1914, the case was argued and submitted to the Supreme Court of Louisiana.

On January 25th, 1915, the Supreme Court of Louisiana handed down an opinion and decree, affirming the judgment of the Civil District Court of the Parish of Orleans, interdicting said Fernand Vaughan Gasquet.

On February 8th, 1915, a petition for a rehearing was filed in the Supreme Court of Louisiana, within the delay allowed by law within which such application could be made, and while the application for a rehearing was pending, on February 20th, 1915, Fernand Vaughan Gasquet, who was then a citizen of Tennessee and a resident of the City of Memphis, filed suit in the Probate Court of Shelby County, Tennessee, a competent Court with jurisdiction over the county in which he resided, in pursuance of the law of Tennessee, and after full disclosure of all of the Louisiana proceedings had, the Court ordered the empaneling of a jury to inquire into his sanity.

On February 22nd, 1915, the jury was empaneled, testimony taken and a verdict and judgment rendered, decreeing Fernand Vaughan Gasquet to be of sound mind and of sufficient capacity for the government of himself and his property, and that he had been since July 24th, 1914, a resident and citizen of the County of Shelby and State of Tennessee (Tr., pp. 42, 51).

On March 4th, 1915, while the petition for a rehearing was still pending, Fernand Vaughan Gasquet presented a motion to the Supreme Court of Louisiana, in which he suggested to that Court that he was no longer a citizen of the State of Louisiana; that he had removed his citizenship to the State of Tennessee, where he had been pronounced by a verdict of a jury and a judgment of a Court of competent jurisdiction sane and of full capacity to take care of his person and property, and that by reason of that judgment, evidencing his complete restoration to sanity, under the full faith and credit clause of the Constitution of the United States, the proceedings for his interdiction should be abated and dismissed by the Court, or the whole matter remanded to the Civil District Court of the Parish of Orleans, with proper instructions to that end (Tr., pp. 40, 42).

The motion to abate or dismiss was denied on March 22nd, 1915. and a rehearing refused on that date.

On March 30th, a writ of error, to act as a **supersedeas**, was granted to this Court by the Chief Justice of the Supreme Court of Louisiana.

There was filed in the Supreme Court of Louisiana the following assignment of errors:

ASSIGNMENT OF ERRORS.

"First. That in this cause there is drawn in question the validity of the judicial proceeding

of another State, and full faith and credit has not been given by this Honorable Court to said judicial proceeding, and the rights therein adjudicated to petitioner have been denied him, in violation of Section 1 of Article 4 of the Constitution of the United States.

"Second. That in a **habeas corpus** proceeding, legally and properly tried by the Court of Appeal for the Parish of Orleans, in accordance with Article 104 of the Constitution of the State of Louisiana, subsequent to the judgment of interdiction rendered by the Civil District Court in this case, said Court of Appeal for the Parish of Orleans adjudged petitioner to be sane, and this Court, without having said judgment of the Court of Appeal for the Parish of Orleans before it, by writ of **certiorari** or review, in accordance with Article 101 of the Constitution of Louisiana, being the only method by which the Supreme Court of Louisiana is authorized to review judgments of the said Court of Appeal for the Parish of Orleans, has reversed, nullified and set aside said judgment of the Court of Appeal for the Parish of Orleans, and has thereby deprived petitioner of his liberty, status in society and vested rights, without due process of law and equal protection of the law, in violation of the 5th and 14th amendments of the Constitution of the United States.

"Third. That the effect of the reversal and annulment of the said judgment of the Court of Appeal for the Parish of Orleans is to suspend the writ of **habeas corpus** guaranteed to citizens of the United States, under Article 1, Section 9, of the Constitution of the United States" (Tr., p. 52).

MOTION TO CONSOLIDATE.

On April 3rd, 1915, Fernand Vaughan Gasquet's estate in Louisiana, consisting of an interest in his mother's succession, worth approximately $200,000.00, being in the custody of the testamentary executor of his mother's succession and the Civil District Court of the Parish of Orleans, State of Louisiana, filed a bill of complaint in the United States District Court in and for the Eastern District of Louisiana, New Orleans Division, in which he alleged himself to be a citizen of Tennessee and **sui juris**, and claimed the right to an accounting from Charles Payne Fenner, the testamentary executor of his mother's succession, and the husband of one of the plaintiffs in the interdiction suit, and a partition of the succession between himself and Mrs. Eveline Gasquet, wife of Charles Payne Fenner, and Mrs. Martha Gasquet, wife of George G. Westfeldt, both of whom were plaintiffs in said interdiction suit (Tr. No. 656, pp. 1, 4).

The bill of complaint was answered, and in the answer it was denied that Gasquet was a citizen of the State of Tennessee, and it was averred that he was a citizen of the State of Louisiana, with his domicile at New Orleans, and the right to the relief asked was denied by the defendants on the ground that Gasquet did not have capacity to demand a partition of the estate and the delivery to him of his share of the estate or an accounting from the testamentary executor of his mother's succession, by reason of the interdiction proceedings against him in Louisiana (Tr. No. 656, pp. 4, 7).

On the trial of the case it was shown by the production of the proceedings had in the Probate Court of Shelby County, Tennessee, under the laws of Tennessee, which were offered in evidence, that Gasquet had been pronounced sane by a Court of competent jurisdiction in Tennessee, where he resided and had resided for a long time previous to the filing of the proceedings, that he was a citizen of the State of Tennessee, and fully capable of taking care of his own person and property, and it was contended that that Court, being vested with jurisdiction of Gasquet's person and with jurisdiction to render the judgment, such a judgment was conclusive evidence in Louisiana, under the full faith and credit clause of the Constitution of the United States, of the fact that he was **sui juris** and a citizen of the State of Tennessee, and that being such, he was entitled in Louisiana, under the Federal Constitution, to all the rights, privileges and immunities in Louisiana of a citizen of Louisiana, and that as a citizen of Louisiana and **sui juris** had the right to the possession and administration of his property, he, a citizen of Tennessee, was entitled in Louisiana to the same right.

The contention in that case, No. 656 of the docket of this Court, was rejected and an appeal taken to this Court, which is now pending under the said No. 656, **and the transcript has been printed.**

The two cases really constitute one, and in order to avoid engendering a state of confusion, a motion was presented to this Court, which has not been disposed of, to advance the case No. 656, and consolidate it with this case (No. 116).

Under the relief asked by the motion to consolidate, we apprehend it would be entirely within the power of this Court to consolidate the two cases under the No. 656, if the Court should come to the conclusion that it would be expedient to do so.

If the two cases are not disposed of together, the effect of deciding this case (No. 116) now, against plaintiff in error, would simply be to subject the estate of Fernand Vaughan Gasquet in Louisiana to the expenses of a costly administration in that State, without there being any necessity for so doing. Mr. Gasquet has left the State of Louisiana forever, and there is no process known to the law by which he could be compelled to return to Louisiana. His estate there is now in the hands of the Court, being administered by a perfectly responsible officer of that Court, and the income is remitted to Mr. Gasquet in Tennessee every week as it accrues. Nobody could suffer any injury by delaying the decision in this case (No. 116) until case No. 656 can be reached on the docket, when the two can be disposed of together and all of the expenses and annoyance of having a Louisiana curator appointed in Louisiana, to serve no useful purpose, can be avoided and the matter finally disposed of by either ordering the delivery to Mr. Gasquet of his property in Louisiana, or denying his right to have his property turned over to him. Therefore, it seems to the writers that it would be expedient and entirely consonant with the ends of justice to consolidate cases Nos. 116 and 656, under the No. 656 of this docket, and let them come up together and be disposed of at the same time. Particularly, is this so, in view of the fact that the only person in this

litigation, whose welfare is in the slightest degree to be affected is Fernand Vaughan Gasquet.

ARGUMENT.

May It Please Your Honors:

From the statement of the case, it will have been evident that it was made to appear to the Supreme Court of Louisiana, prior to the judgment of interdiction having become final, that the attention of the Court was called by the presentation of the Tennessee proceedings and judgment therein that the plaintiff in error, the subject-matter of the entire proceedings, had removed from the State of Louisiana to the State of Tennessee, had become a citizen of that State, and had been pronounced sane and capable of taking care of his person and managing his property by a Court of competent jurisdiction of Tennessee, by evidence of the most conclusive character, giving to those proceedings and the judgment therein the effect to which they were entitled under the Constitution of the United States. The Supreme Court of Louisiana was bound to take notice of the fact that any judgment of interdiction, under the circumstances, would be the merest **brutum fulmen**, and it was not within the province of the Supreme Court of Louisiana to disregard the Tennessee proceedings and judgment, without denying to them full faith and credit.

Under **Art. 396 of the Revised Civil Code of Louisiana**, the Supreme Court of Louisiana was fully empowered to examine the interdict himself to satisfy itself that he was a fit subject for interdiction, and the receipt of new proof was fully authorized.

The right of the Supreme Court to do so was fully discussed and recognized in the case of **Franke v. His Wife, 29 An., 304,** and therefore that Court was bound to take notice of a change in status of the subject of the suit.

Revised Civil Code, Art., 396:

> "In case of appeal, the appellant Court may, if it is deemed necessary, proceed to the hearing of new proofs, and question, or cause to be questioned, as above provided, the person whose interdiction is petitioned for, in order to ascertain the state of his mind."

Therefore, in every interdiction suit, the interdict himself is a part of the testimony—he is, as it were, one of the exhibits in the case, and anything in the way of a change in his condition should be carefully weighed by the appellate Court, and if it is made to appear to that Court at the time of the hearing in the appellate Court his condition is so changed as not to warrant his interdiction, unquestionably it is the duty of the Court to hold in such cases, where the interdict at the time of the hearing in the appellate Court was sane, that the proceedings should abate.

Article 396 of the Revised Civil Code in itself makes it apparent that there is no such thing as **res adjudicata** as to the mental condition of any person, whose interdiction is sought, and that where the subject of a suit is found to be sane, there should be an abatement of the case.

When the plaintiff in error removed from the State of Louisiana permanently, and became a citizen of another State, the very object of the suit passed out of ex-

istence, so far as the right of Louisiana Courts to determine his status was concerned.

The judgment rendered by the Probate Court of Shelby County, Tennessee, the Court of Gasquet's domicile, was, in no sense of the word, an attack on the Louisiana proceedings. The finding of that Court related to a period long subsequent to the time covered by the interdiction proceedings in Louisiana and evidenced conclusively a change in the mental condition of the subject of them after the period covered by the proceedings to interdict him in Louisiana. It might well be that the plaintiff in error was insane at the time the judgment in the Civil District Court for the Parish of Orleans, State of Louisiana, was rendered, and yet have been perfectly sane at the time when he was pronounced sane by the proceedings had in the Probate Court of Shelby County, Tennessee. In Louisiana, the law provides that interdiction terminates with the causes which gave rise to it.

> "**Article 420.** Termination of Interdiction. Interdiction ends with the causes which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced."
>
> "**Article 421.** Forms in Revoking. Interdiction can only be revoked by the same solemnities which were observed in pronouncing it."

A consideration of these two articles, taken in connection with **Art. 415 of the Revised Civil Code**, makes it apparent that in a suit to remove an interdiction, there is involved no review or test of the correctness of the proceedings in which the judgment of interdiction was pro-

nounced. Those articles mean that when a person recovers his sanity, he proceeds to have his condition investigated by the Judge of his domicile at the time of his recovery and has himself pronounced sane and capable of managing his own affairs. The domicile of the interdict, no matter where he may have been interdicted, is the domicile of his curator, and of necessity the suit to remove the interdiction in the State of Louisiana is an entirely independent suit from that in which he was interdicted and must be brought at his domicile, that is to say, the domicile of his curator.

Art. 415, Revised Civil Code:

> "The person interdicted is, in every respect, like the minor who is under a tutor, both as it respects his person and estate; and the rules respecting the tutorship of the minor, concerning the oath, the inventory and the security, the recording of the legal mortgage, the mode of administering, the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the tutorship, the mode of rendering the accounts, and the other obligations, apply with respect to the curatorship of the person interdicted."

In Louisiana, it matters not what place may be the domicile of the minor, prior to the appointment of his tutor. After the tutor is appointed, the minor's domicile is the domicile of the tutor, and the domicile of the minor changes whenever the tutor changes his domicile.

Under the law of Louisiana, any minor above the age of eighteen years, has the right to apply to the Court to have himself relieved of all of the disabilities of

minority. This petition is presented to the Court of his domicile, the domicile of his tutor, without any regard to the jurisdiction in which the tutor may have been appointed. Therefore, it is submitted there can be no doubt that in Louisiana, when an interdict recovers his sanity, the interdiction proceedings are not attacked and are in no manner reviewed; but by an entirely independent suit, often in a different jurisdiction, the question of the interdict's mental condition is submitted in a new proceeding to the Court, and the Court only deals with his mental condition at the time the application to have his interdiction removed is made.

Now, in the instant case, what was there to prevent the plaintiff in error applying to the Court of his domicile, vested with jurisdiction to determine his sanity **vel non**, and having his sanity recognized there? He was present in person in Shelby County, Tennessee, the laws of Tennessee authorized the application he made, the application was made, and according to the forms prescribed by the Tennessee law, he was pronounced a citizen and **sui juris.**

So far as the effect of Gasquet's removal from Louisiana to Tennessee permanently and the proceedings pronouncing him a citizen of that State and sane are concerned, we are unable to see any difference between the effect of these facts on the case and the effect produced on the interdiction proceedings by the death of the subject of them.

In the case **In re Interdiction of Lambert, 115 La., at page 86,** the Supreme Court of Louisiana held that the effect of the death of the interdict, where the death occurred after the appeal was lodged in the Supreme

Court of Louisiana, was to put an end to the controversy, and the suit was abated.

In the case **In re Jones**, in the **117 La., 106**, where the subject of the suit died while the case was being argued in the Supreme Court, that Court held that the death of the appellant, who had been interdicted by the trial Court, pending the argument of the case, abated the case, and that everything in the case stopped right there.

> "Mrs. H. R. Jones was interdicted by judgment of the District Court, from which she took a suspensive appeal to the Supreme Court. An appeal also was taken by her from the judgment homologating the account of the curator **pro tem.**
>
> "The death of the appellant pending the argument of the case in this Court has been suggested, and a motion filed to dismiss the appeal. The motion must prevail. See **In re Lambert, 115 La., 469, 39 South., 447.**
>
> "The suit having abated, no judgment can be rendered therein, and each party must pay his own costs."
>
> **117 La., 106, 107.**

So, in this case, it was made to appear to the Supreme Court of Louisiana that, insofar as there could be any possible control by the Supreme Court of Louisiana of the person of the party who is the subject of the interdiction proceeding—all possibility of the exercise of such control had ceased to exist, and that, insofar as the control of his property by a Chancery Court was concerned, he was a citizen of another State **sui juris**, and under the Constitution of the United States, as such, was entitled in Louisiana to exercise all the prerogatives in

Louisiana of a citizen of Louisiana, and that as no Court in Louisiana could control a citizen of Louisiana **sui juris** in the full and complete disposal and control of his property, therefore, no Court in Louisiana could control the plaintiff in error in the full exercise of the possession, control and disposition of his property in Louisiana.

The only way to escape this effect is to fail to give to the Tennessee proceedings and judgment the full faith and credit accorded them by the Federal Constitution, and to deny to the plaintiff in error equal rights, privileges and immunities of a citizen of Louisiana.

Defendants in error's contention seems to be that the proceedings for interdiction, as evidenced by the record of said proceedings at the time of plaintiff in error's application to the Probate Court of Shelby County, Tennessee, **ipso facto**, as a matter of legal consequence, precluded him from changing his domicile from Louisiana to Tennessee, and hence precluded the Tennessee Court from inquiring, as a matter of fact, into his then mental condition and his qualifications for citizenship and his capacity to take care of his person and administer his estate.

If the interdiction proceedings in themselves were no bar to plaintiff changing his dimicile, then the judgment of the Probate Court of Shelby County, Tennessee, is conclusive evidence of plaintiff in error's citizenship and of his present capacity to take care of his person and administer his estate as therein adjudicated, and is entitled under Article 4, Section 1, of the Constitution of the United States to full faith and credit in Louisiana, and when given its due full faith and credit plaintiff, as a citizen of Tennessee, entitled to all the privileges and immu-

nities of a citizen of Louisiana, in Louisiana, under Art. 4, Sec. 2 of the Constitution of the United States, and this Court is bound to so decree.

There is no final judgment of interdiction against plaintiff. If the interdiction proceeding now pending before this Court should be decided in favor of plaintiff in error, he will never have been under any disabilities. He has never been under guardianship, and, **non constat,** that he ever will be. Defendants in error's position, that the pendency of an interdiction proceeding is equivalent to a final adjudication of incompetency or interdiction, cannot be sustained. If the pendency of an interdiction suit had the effect of depriving a party of his civil rights, it is manifest that this proceeding contemplating solely the protection of unfortunate members of society who are unable to care for themselves, might easily be distorted into and often resorted to as a vehicle of fraud and oppression.

Civil Code of La., Arts. 400 and 401 relied on by defendants as supporting their view came squarely before the Supreme Court of Louisiana for interpretation in the case of **De Lesdernier v. De Lesdernier, 45 An., 1366,** where the Court said:

> "The defendant objects to this suit on the ground that the wife was incapable of acting (bringing a suit for divorce against him) after the petition for interdiction had been filed. There is no provision of the statute law, nor is there any article of the Code which prevents the defendant in proceedings to interdict him from performing acts, such as bringing suits and making contracts."
>
> **45 An., 1366.**

In the case of **In re Jones, 116 La., 776,** the inoperation of an interdiction proceeding pending on appeal was discussed and determined. It is the confirmative sentence only that can pronounce a judgment of interdiction. No curator can be appointed until the judgment is final.

In the instant case, an attempt was made to have a curator appointed and an order appointing a curator was signed, but on the application of the plaintiff in error, the appointment was rescinded by the Judge of the Civil District Court for the Parish of Orleans.

As no curator can be appointed until there is a final judgment of interdiction, **Article 398 of the Civil Code** can be given no effect.

The proceedings lack all the elements of finality and even a **prima facie** showing of incompetency cannot be predicated thereon.

But indulging, **arguendo,** the theory of defendants in error that by the mere filing of the petition for interdiction, plaintiff in error became **non sui juris,** nevertheless it would not follow that he was concluded from acquiring a domicile in Tennessee, and the Probate Court of Shelby County had jurisdiction to hear and determine his suit. Your Honors will bear in mind that it appears from this record that plaintiff in error had been pronounced sane and capable of taking care of his person and property by a respectable Court of Louisiana before he moved into Tennessee.

> "The mere fact that a person is of unsound mind does not necessarily preclude him from establishing a domicile, as the question must depend entirely upon the extent to which his reason

has been impaired. In general it may be stated that but a comparatively slight degree of understanding is required in order that his action may be recognized."

14 Cyc., 848, and authorities cited.

"So far as it affects the succession of property, the act of the ward in changing his domicile is no more inconsistent with or prohibited by the guardianship than is his act in making a will. Both acts require competent mental capacity, and the decree of guardianship is not conclusive of the want of capacity to do either act. That decree does not fix the general status of the ward as a lunatic or an insane person, but only his local status as one under guardianship in this Commonwealth as an insane person, and is conclusive only in the domestic Courts and as to acts which the law required to be done by the guardian and forbids to be done by the ward."

Talbot v. Chamberlain, 20 N. E., 306.

"When Mr. Stone left this State and went to Iowa to establish his residence there, he had sufficient mental capacity to change his domicile, and he was not under guardianship. The petition for the appointment of a guardian over him was pending, and he had attended a hearing upon it, but there was no adjudication that he was a proper subject for guardianship and no appointment of guardian until several weeks after he took up his residence in Iowa. He was under no custody or restraint and there was no one who had a right to assent or object to his removal."

Talbot v. Chamberlain, 20 N. E., 307.

To the same effect are **Breed v. Pratt, 18 Pick., 115; Mowry v. Latham, 23 Atl. (R. I.), 13; Holyoke v. Haskins, 16 Am. Dec., 375.**

"A person actually insane may acquire a domicile in the place of his actual residence, if he has sufficient capacity to choose a residence."

Concord v. Rumney, 45 N. H., 423; 17 Cent. Digest, Verbo "Domicile," Sec. 1.

In the case of **Woodward v. Woodward, 87 Tenn., 11 S. W. Rep., 892,** it was held that a minor, under guardianship in Tennessee, could change her domicile to Louisiana, and when relieved of the disabilities of minority by a Louisiana Court could take possesson of her estate in Tennessee, although had she remained in Tennessee she could not have done so before attaining the age of 21 years.

And even if the interdiction proceeding imports a **prima facie** incapacity to acquire a domicile, whether such capacity for acquisition of citizenship as the laws of Tennessee require existed, was a question of fact to be determined by the Court and jury to which the issue was submitted. In Judge Cooley's great work on Constitutional Limitations, it is said:

"* * * where the jurisdiction may be said to depend upon the existence of a certain state of facts which must be passed upon by the Courts themselves and in respect to which the decision of the Court once rendered, if there was any evidence whatever on which to base it, must be held final and conclusive in all collateral inquiries, notwithstanding it may have erred in its conclusion."

Cooley, Constitutional Limitations, p. 586; Flanning v. Kraupfl, 26 N. W., 133; Schee v. La Grange, 42 N. W., 616.

In **Freeman on Judgments,** it is observed:

> "Courts of record are presumed to act only in accordance with the authority vested in them by law. Their judgments will generally be treated as conclusive on the parties until the absence of jurisdiction is affirmatively shown. These principles are almost universally recognized in regard to domestic judgments. They are by a preponderance of the authorities considered as applicable with equal force to judgments of other States. 'It is obviously essential to the effectual operation of the design of the Constitution that the records of the judgments of other States duly authenticated under the act of Congress should not merely prove themselves, but give rise to a presumption that the Court possessed the authority which it assumed to exercise."
>
> **Freeman on Judgments, Sec. 565, p. 470.**

And in **Sims v. Gay, 9 N. E., 121,** it is said:

> "Where a Court has authority to determine the facts essential to its jurisdiction, its decision that it has jurisdiction cannot be collaterally impeached."

The Supreme Court of the State of New York, in the case of **In re Fidelity Trust Company of Newark, 57 N. Y. Supp., 361,** said:

> "The Fidelity Trust Company of Newark was appointed committee of the person and estate of the incompetent Mary B. McDermot, by decree of the Orphans' Court of Essex County, N. J., a Court having jurisdiction to make such appointments in general. The incompetent's next of kin,

Mrs. Jennie E. Mead, consented to the entry of the decree, but now seeks her own appointment as committee and opposes the Trust Company's motion for ancillary appointment in this State upon the ground that the incompetency of said Mary B. McDermot had been declared in the course of proceedings in this Court prior to the date of such incompetent's removal to New Jersey, and that, being then incompetent, she could acquire no residence in that State; hence, that the foreign Court had no jurisdiction. It is true that Mary B. McDermot was declared an incompetent person on the return of an inquisition in lunacy upon a commission issued by this Court, but no appointment of a committee was made in those proceedings and the effect of the inquisition was not to preclude absolutely any exercise of an intention of change of residence of the incompetent, since the ability to choose a domicile still remains a question of fact, notwithstanding the inquisition."

* * * * * * * * *

"As to the fact of Mary B. McDermot's ability to choose a domicile in New Jersey, upon which the jurisdiction of the foreign Court might be said to depend, that Court has determined the fact and the next of kin, Mrs. Mead, is concluded from disputing it."

In re Fidelity Trust Co. of Newark, 57 N. Y. Supp., 361.

The question of capacity is one of fact to be determined by the Judge or jury.

21 Howard, 103; 75 Ala. 438; 58 Mass. (4 Cush.) 190; 86 Mass. (4 Allen) 177; 126 Mass., 161; 128 Mass., 219; 58 N. H., 283; 61 N. Y., 261; 27 N. W., 320; Century Digest, Vol. 17, Sec. 40, p. 1100.

In the case of **Breed v. Pratt,** Chief Justice Shaw said:

> "The Court is of opinion that the fact that the testator was under guardianship at the time of the execution of the will * * * did not **de facto** disqualify him from making a valid will, nor does it operate as conclusive evidence of insanity. This point is now to be considered as settled by authority."
>
> **Breed v. Pratt, 18 Pick. (Mass.) 117.**

The law does not inquire into the purposes or motives which induced a party to change his domicile. All it is necessary, in order to affect a change of citizenship from one State to another is to depart from a State of one's domicile into another State, with the intention of remaining there permanently. A man may change his citizenship with the sole motive of invoking the jurisdiction of the Federal Courts, if the change he made was with a **bona fide** intention of permanently remaining in the State to which his citizenship is to be changed.

3 Wash. U. S. (C. C.) 553; 2 Sumner, 254; 129 U. S., 328; 126 U. S., 192.

> "A change of domicile may be made through caprice, whim or fancy, for business, pleasure, to secure a change of climate or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention."
>
> **In re Newcomb's Estate, 84 N. E., 954,** citing **McConnell v. Kelly, 128 Mass., 372.**

> "A man has a right to change his domicile for any reasons satisfactory to himself. In determin-

ing whether there has been such a change from one place to another, the test is to inquire whether he has in fact removed his home to the latter place with the intention of making it his residence permanently or for an indefinite time. If he has, he loses his old domicile and acquires a new one, with all its rights and incidents; and the law does not inquire into the purposes or motives which induced him to make such change. It may be because he prefers the laws of the new place of domicile, or because he can diminish his taxes and other burdens, or because he desires to bring a suit in a Court which would not otherwise have jurisdiction. **(Thayer v. Boston, 124 Mass., 132.)** His status as an inhabitant depends upon the fact that he has made a change of his home and not upon the motives or reasons which influenced him to do so."

McConnell v. Kelly, 138 Mass., 372.

"Interdiction ends with the causes which gave rise to it."

R. C. C., Art. 420.

It would serve no useful purpose to multiply the citation of authority on this subject. It suffices to say that under every system of law accessible to research, this necessary and humane qualification of a judgment of interdiction exists and is given effect.

It follows irresistibly that plaintiff in error had the right and capacity to acquire a domicile in Tennessee, and the Probate Court of Shelby County, Tennessee, had jurisdiction of his petition, and the judgment rendered thereon is absolutely conclusive in this proceeding under Art. 4, Sec. 1, of the Constitution of the United States and Act of Congress of May 26, 1790. This Court must give

the judgment the same effect as it has in the State in which it was rendered.

This Honorable Court has had occasion a number of times to decide this question, and there is a long unbroken line of jurisprudence of that Court on the subject from the case of **Mills v. Duryee, 7 Cranch, 481,** to the present time.

As said in the case of **Insurance Co. v. Harris, 97 U. S., 336,** referring to Art. 4, Sec. 1, of the Constitution of the United States, and Act of Congress of May 26, 1790:

> "The meaning of this is, that when a judgment or decree has been given in one State by a Court having jurisdiction of the parties and the subject, it has the same force and effect when pleaded or offered in evidence in the Courts of any other State."
>
> Citing **Mills v. Duryee, 7 Cranch, 481; Mayhew v. Thatcher, 6 Wheat., 129; Habich v. Folger, 20 Wall., 1; Burnly v. Stephenson, 24 Ohio, 474; Dobson v. Pearce, 12 N. Y., 156.**

And in **Christmas v. Russell, 5 Wall., 290:**

> "When duly pleaded and proved such judgments have the effect of being not merely **prima facie** evidence, but conclusive proof of the rights therein adjudicated; and a refusal to give them the force and effect in this respect which they had in the State in which they were rendered denies to the party a right secured to him by the Constitution and laws of the United States.
>
> "The requirement of the Constitution is not that some, but that full faith and credit shall be given

by States to the judicial decrees of other States. That is to say, where a decree rendered in one State is embraced by the full faith and credit clause, that constitutional provision commands that the other States shall give to the decree the force and effect to which it was entitled in the State where rendered."

Harding v. Harding, 198 U. S., 317; Haddock v. Haddock, 201 U. S., 562.

The following is a list of authorities interpreting this provision of the Constitution of the United States and the Act of Congress of 1790:

Hampton v. McConnell, 3 Wheat., 234; Mayhew v. Thatcher, 6 Wheat., 129; D'Arcy v. Ketchum, 11 How., 165; Lafayette Insurance Co. v. French, 18 How., 404; Christmas v. Russell, 5 Wall., 290; Green v. Van Buskirk, 7 Wall., 139; Cooper v. Reynolds, 10 Wall., 308; Chew v. Brumagen, 13 Wall., 497; Crapo v. Kelly, 16 Wall., 610; Board of Public Works v. Columbia College, 17 Wall., 521; Thompson v. Whitman, 18 Wall., 457; Habich v. Folger, 20 Wall., 1; Maxwell v. Stewart, 22 Wall, 77; South Ottawa v. Perkins, 94 U. S., 260; Pennoyer v. Neff, 95 U. S., 714; Insurance Co. v. Harris, 97 U. S., 331; Embry v. Palmer, 107 U. S., 3; Hanley v. Donoghue, 116 U. S., 277; Chicago, etc., Ry. Co. v. Wiggins Ferry Co., 119 U. S., 615; Cole v. Cunningham, 133 U. S., 107;

Reynolds v. Stockton, 140 U. S., 254; Chicago, etc., R. Co. v. Sturm, 174 U. S., 710; Hancock Nat. Bank v. Farnum, 176 U. S., 640; Lynde v. Lynde, 181 U. S., 183; Harding v. Harding, 198 U. S., 317; Harris v. Balk, 198 U. S., 215; Louisville, etc., R. Co. v. Deer, 200 U. S., 176; Haddock v. Haddock, 201 U. S., 562.

The judgment of the Probate Court of Shelby County, Tennessee, being conclusive evidence of all the rights therein adjudicated, and being entitled to full faith and credit in the State of Louisiana, the plaintiff, a citizen of Tennessee, is entitled "to all privileges and immunities of citizens of the several States," under Art. 4, Sec. 2, of the Constitution of the United States.

The plaintiff in the State of Tennessee enjoys all the rights and privileges of every other citizen of Tennessee. In that State he is under no disabilities whatever. He is therefore entitled in Louisiana "to all privileges and immunities" of citizens of Louisiana.

In construing the equal privileges and immunities clause of the Federal Constitution, this Court has as, in dealing with other clauses, announced its intention of developing the definition of its meaning by the gradual process of judicial exclusion and inclusion; but Mr. Justice Washington, in the case of **Corfield v. Coryell, 4 Wash. C. C., 371-380,** went very far towards defining the meaning of this clause of the Constitution, and his definition as far as he went has been accepted by this Court without qualification. He said:

"The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, **fundamental**; which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be comprehended under the following general heads: protection by the Government; the enjoyment of life and liberty; with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State for the purposes of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of **habeas corpus**; to institute and maintain actions of any kind in the Courts of the State; **to take, hold and dispose of property**, either **real or personal**; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elective franchise, as regulated and established by the laws or Constitution of the State in which it is to be exercised."

See **Blake v. McLung, 172 U. S., 248.**

In the case of **Ward v. Maryland, 12 Wall., 430,** this Court said:

> "Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the Courts of the State; and to be exempt from any higher taxes than are imposed by the State upon its own citizens."

Again, in the case of **Paul v. Virginia, 8 Wall.,** Mr. Justice Field, as the organ of the Court, said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States and egress from them; it insures to them in other States the same freedom possessed by citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.
>
> "Indeed, without some provision of the kind removing from the citizens of each State the disa-

bilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

Paul v. Virginia, 8 Wall., 180.

In concluding this brief, the writers again request the Court, as a matter of expediency, to save the subject of this interdiction proceeding, who is now entirely sane and a citizen of the State of Tennessee, from the expense of having his property administered by a Louisiana Court, in any event, until after suit No. 656 of the docket of this Court, in which he has brought suit against the defendants in error in this case to recover possession of his property, to which he is entitled as a citizen of Tennessee **sui juris**, shall have been considered and determined by the Court. A personal curator cannot reach him. His proprty is already in the hands of the Court and perfectly safe. His income has been remitted to him regularly, week by week, for more than three years, by the testamentary excutor of his mother's succession, and he will continue to do so; and there is no good reason that we can see why such an imposition, under the circumstances, should be inflicted on him. It will be time to order the appointment of a curator to take possession of his Louisiana property and administer it, when your Honors shall have determined suit No. 656, and decided whether or not the judgment of the Probate Court of Shelby County, Tennessee, shall be given full faith and credit, and the plaintiff in error held to be entitled to all

the rights and privileges, as a citizen of Tennessee, of a citizen in Louisiana.

Respectfully submitted,

J. C. & THOS. GILMORE,

WM. WINANS WALL,

Attorneys for Plaintiff in Error.

GASQUET *v.* LAPEYRE ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 116. Argued November 16, 1916.—Decided January 8, 1917.

The provision in § 9 of Article I of the Constitution guaranteeing the privilege of *habeas corpus* is not a limitation upon state action.

A decision of a state Supreme Court, involving only the construction of the state constitution and statutes respecting the jurisdiction of

state courts, can raise no question under the due process or equal protection clauses of the Fourteenth Amendment.

To invoke the full faith and credit clause and the act of Congress passed to carry it into effect, Article IV, § 1; Rev. Stats., § 905, on behalf of a judgment of one State in a court of another, it is necessary by allegation or proof, or in some other recognized mode, to bring to the attention of that court the law or usage which defines the effect of the judgment in the State of its rendition.

Assignments of error contrary to the foregoing propositions are frivolous.

Writ of error to review 136 Louisiana, 957, dismissed.

THE case is stated in the opinion.

Mr. William Winans Wall, with whom *Mr. J. C. Gilmore*, *Mr. Thos. Gilmore* and *Mr. Edward N. Pugh* were on the briefs, for plaintiff in error.

Mr. George Denegre, *Mr. Victor Leovy* and *Mr. Henry H. Chaffe* for defendants in error, submitted.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

In a proceeding against the plaintiff in error, wherein he was fully heard, the civil district court of the parish of his residence and domicile pronounced a judgment of interdiction against him. He appealed to the Supreme Court of the State, which affirmed the judgment (136 Louisiana, 957), and thereafter he sued out this writ of error. Our jurisdiction is challenged by a motion to dismiss.

There are three assignments of error, and the facts essential to an understanding of two of them are these: After the judgment of interdiction and before the hearing upon the appeal the plaintiff in error, who was in custody under an order of the criminal district court of the parish committing him to an asylum as a dangerous insane person, secured his release from such custody through an

original proceeding in *habeas corpus* in the court of appeal of the parish, which adjudged that he had recovered his sanity. He then called the attention of the Supreme Court to this judgment and insisted that it was decisive of his sanity at a time subsequent to the judgment of interdiction and was *res judicata* of the issue presented on the appeal. But the Supreme Court held that under the state constitution and statutes the court of appeal was without jurisdiction and therefore its judgment was not *res judicata*. In the assignments of error it is said of this ruling, first that it practically suspended the privilege of the writ of *habeas corpus* contrary to § 9 of Article I of the Constitution of the United States, and, second, that it denied the plaintiff in error the due process and equal protection guaranteed by the Fourteenth Amendment, in that it did not give proper effect to certain provisions of the constitution and statutes of the State bearing upon the jurisdiction of the court of appeal and the Supreme Court. Both claims, in so far as the Federal Constitution is concerned, are so obviously ill founded and so certainly foreclosed by prior decisions that they afford no basis for invoking our jurisdiction. Section 9 of Article I, as has long been settled, is not restrictive of state, but only of national, action. *Munn* v. *Illinois*, 94 U. S. 113, 135; *Morgan* v. *Louisiana*, 118 U. S. 455, 467; *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388, 400. This is also true of the Fifth Amendment. *Barron* v. *Baltimore*, 7 Pet. 243; *Booth* v. *Indiana*, 237 U. S. 391, 394; *Hunter* v. *Pittsburgh*, 207 U. S. 161, 176. And, as our decisions show, there is nothing in the clauses of the Fourteenth Amendment guaranteeing due process and equal protection which converts an issue respecting the jurisdiction of a state court under the constitution and statutes of the State into anything other than a question of state law, the decision of which by the state court of last resort is binding upon this court. *Iowa Central Ry. Co.* v. *Iowa*, 160 U. S. 389, 393;

Castillo v. *McConnico*, 168 U. S. 674, 683; *Rawlins* v. *Georgia*, 201 U. S. 638; *Burt* v. *Smith*, 203 U. S. 129, 135; *Standard Oil Co.* v. *Missouri*, 224 U. S. 270, 280–281; *de Bearn* v. *Safe Deposit Co.*, 233 U. S. 24, 34; *McDonald* v. *Oregon R. R. & Navigation Co.*, *ibid.*, 665, 669–670; *Missouri* v. *Lewis*, 101 U. S. 22, 30.

The facts bearing upon the remaining assignment are as follows: After the judgment of affirmance by the Supreme Court and during the pendency of a petition for rehearing, the plaintiff in error, claiming that upon his release from custody by *habeas corpus* he had removed to, and become a resident and citizen of, Shelby County, Tennessee, petitioned the probate court of that county for an inquisition respecting his sanity. The court entertained the petition and within a day or two rendered a judgment thereon finding that the plaintiff in error had become a resident and citizen of Tennessee, adjudging that he was sane and able to control his person and property and declaring that any disability arising from the proceedings in Louisiana was thereby removed. He then brought the proceedings in Tennessee—all certified conformably to the law of Congress—to the attention of the Louisiana Supreme Court by a motion wherein he insisted that under the Constitution of the United States, Article IV, § 1, and the law passed by Congress to carry it into effect, Rev. Stats., § 905, the judgment in Tennessee was conclusive of his residence and citizenship in that State and of his sanity and ability to care for his person and property, and that in consequence the interdiction proceeding should be abated. But the motion was denied, along with the petition for a rehearing, and in the assignments of error it is said that in denying the motion the court declined to give the judgment in Tennessee the full faith and credit required by the Constitution and the law of Congress.

There are several reasons why this assignment affords

no basis for a review here, but the statement of one will suffice. What the Constitution and the congressional enactment require is that a judgment of a court of one State, if founded upon adequate jurisdiction of the parties and subject-matter, shall be given the same faith and credit in a court of another State that it has by law or usage in the courts of the State of its rendition. This presupposes that the law or usage in the latter State will be brought to the attention of the court in the other State by appropriate allegation and proof, or in some other recognized mode; for the courts of one State are not presumed to know, and therefore not bound to take judicial notice of, the laws or usage of another State. *Hanley* v. *Donoghue*, 116 U. S. 1; *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 119 U. S. 615; *Lloyd* v. *Matthews*, 155 U. S. 222, 227; *Western Indemnity Co.* v. *Rupp*, 235 U. S. 261, 275. Here the law or usage in Tennessee where the judgment was rendered was not in any way brought to the attention of the Louisiana court, and therefore an essential step in invoking the full faith and credit clause was omitted. In this situation the claim that the Louisiana court refused to give effect to that clause is so devoid of merit as to be frivolous.

Writ of error dismissed.